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TRIAL

OF

THE MAJOR WAR CRIMINALS

BEFORE

THE INTERNATIONAL MILITARY TRIBUNAL

NUREMBERG

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PRELIMINARY HEARING

Wednesday, 14 November 1945

THE PRESIDENT (Lord Justice Lawrence): Is Counsel for Gustav Krupp von Bohlen in Court?

DR. THEODOR KLEFISCH (Counsel for Defendant Krupp von Bohlen): Yes.

THE PRESIDENT: Do you wish to make your motion now?

DR. KLEFISCH: Yes.

THE PRESIDENT: Will you make your motion?

DR. KLEFISCH: Mr. President, gentlemen: As defense counsel for Krupp von Bohlen und Halbach, I repeat the request which has already been made in writing, to suspend the proceedings against this defendant, at any rate, not to carry out the Trial against this defendant. I leave it to this High Court to decide whether it should suspend proceedings against Krupp for the time being or altogether.

According to the opinion of the specialists, who were appointed by this Court for the investigation of the illness of Krupp, Krupp von Bohlen und Halbach is not able, on account of his serious illness, to appear at this Trial without danger to his life. Their opinion is that he is suffering from an organic disturbance of the brain and that mental decline makes the defendant incapable of reacting normally to his surroundings.

From that it follows that Krupp is not capable of informing his defense. Furthermore, the report states that the deterioration of his physical and mental powers has already been going on for several years and that since Krupp was involved in an auto accident on 4 December 1944, he can only speak a few disconnected words now and again, and during the last two months has not even been able to recognize his relatives and friends. On the basis of these facts one can only establish that Krupp has no knowledge of the serving of the Indictment of 19 October. Thus he does not know that he is accused and why.

The question now arises whether, in spite of this permanent inability to appear for trial, in spite of this inability to inform his defense, and in spite of his not knowing of the Indictment and its contents, Krupp can be tried *in absentia*. Article 12 of the Charter gives the right to the Tribunal to take proceedings against people who are absent, under two conditions: First, if the accused cannot be found; second, if the Tribunal, for other reasons, thinks it is necessary in the interests of justice, to try him *in absentia*.

Since the first condition, impossibility of finding the defendant, is immediately eliminated, it must be examined whether the second condition can be applied, that is, whether it is necessary, in the interests of justice, to try Krupp.

The Defense is of the opinion that justice does not demand a trial against Krupp *in absentia,* that this would even be contrary to justice. I want to quote the following reasons: The decision on this question must come from the concept of justice in the sense of Article 12 of the Charter. We must take into account here that the 12th Article is purely a regulation concerning procedure. The question arises, however, whether the Trial against Krupp in his absence would be a just procedure. In my opinion, a just procedure is only then given if it is, as a whole or in its particular regulations, fashioned in such a way that an equitable judgment is guaranteed. That is a judgment whereby the convicted defendant will be punished accordingly and the innocent exonerated from guilt and punishment.

Is it possible that a just judgment can be guaranteed if a defendant is tried *in absentia,* who through no fault of his own, cannot appear and defend himself, who cannot inform his defense counsel, and who does not even know that he is accused and for what reason? To ask this question is to deny it. Even the regulations of the Charter concerning the rights of the defendant in the preliminary procedure and in the main Trial, oblige us to answer this question with "no".

The following regulations are applicable here:

According to Article 16 (a), the accused shall receive a copy of the Indictment before the Trial.

According to Article 16 (b), the defendant in the preliminary procedure and in the main Trial, has the right to declare his own position in the face of each accusation.

According to Article 16 (c), a preliminary interrogation of the defendant should take place.

According to Article 16 (d), the defendant shall decide whether he wishes to defend himself or to have somebody else defend him.

According to Article 16 (c), the defendant has the right to submit evidence himself and to cross-examine each witness.

The Defendant Krupp could not make use of any of these rights.

According to Article 24 the same also applies to the special rights, which have been accorded the defendants for the main Trial. The defendant should declare his position in the main Trial, that is, whether he pleads guilty or not.

In my opinion, this is a declaration which is extremely significant for the course of the Trial and of the decision, and the defendant can only do this *in persona.* I do not know whether it is admissible

that Defense Counsel may make this declaration of "guilty" or "not guilty" for the defendant, and even if this were admissible, Defense Counsel would not be able to make this declaration because he had no opportunity to come to any understanding with the defendant.

Finally, the accused, who is not present, cannot exercise his right of a final plea.

The Charter, which has decreed so many and such decisive regulations for the rights of the defendant, thereby recognizes that the personal exercise of these rights which were granted to the accused is an important source of knowledge for the finding of an equitable judgment, and that a trial against such a defendant, who is incapable of exercising these rights through no fault of his own, cannot be recognized as a just procedure in the sense of Article 12.

I should like to go further, however, by saying that the procedure *in absentia* against Krupp, would be contrary to justice, not only according to the provisions of the Charter but also according to the generally recognized principles of the law of procedure of civilized states.

So far as I am informed, no law of procedure of a continental state permits a court procedure against somebody who is absent, mentally deranged, and completely incapable of arguing his case. According to the German Law of Procedure, the trial must be postponed in such a case (Paragraph 205 of the German Code of Criminal Law). If prohibiting the trial of a defendant, who is incapable of being tried, is a generally recognized principle of procedure *(principe général de droit reconnu par des nations civilisées)* in the sense of Paragraph 38 (c) of the Statute of the International Court in The Hague, then a tribunal upon which the attention of the whole world is, and the attention of future generations will be directed, cannot ignore this prohibition.

The foreign press, which in the last days and weeks has repeatedly been concerned with the law of the Charter, almost unanimously stresses that the formal penal procedure must not deviate from the customs and regulations of a fair trial, as is customary in civilized countries; but it does not object, as far as the penal code is concerned, to a departure from the principles recognized heretofore, because justice and high political considerations demand the establishment of a new international criminal code with retroactive effect in order to be able to punish war criminals.

I wish to add another point here, which may be important for the decision on the question discussed. This High Court would naturally not be able to acquire an impression of the personality of Krupp, an impression which in such an extraordinarily significant trial is a valuable means of perception, which cannot be underestimated for the judgment of the incriminating evidence. If, in the

Charter, trial *in absentia* is permitted on principle against defendants who cannot be located, then corresponding laws of procedure of all states, and even of the German Code of Criminal Procedure agree to that.

A defendant who has escaped is absolutely different from a defendant who cannot argue his case, because in contrast to the latter, he has the possibility of appearing in court and thus, of defending himself. If he deliberately avoids this possibility, then he arbitrarily makes himself responsible for the disadvantages and dangers entailed by his absence. In this case, naturally, there would be no question of an unjust trial.

The view has been expressed in recent days and weeks that world opinion demands a trial against the Defendant Krupp under all circumstances, and even *in absentia,* because Krupp is the owner of the greatest German armament works and also one of the principal war criminals. So far as this demand of world opinion is based on the assumption that Krupp is one of the principal war criminals, it must be replied that this accusation is as yet only a thesis of the Prosecution, which must first be proved in the Trial.

The essential thing, however, in my opinion, is that it is not important whether world opinion or, perhaps, to use an expression forged in the Nazi work-shop, "the healthy instincts of the people," or even political considerations play a part in the decision of this question, but that the question (Article 12) must be decided uniquely from the point of view of whether justice demands the trial against Krupp. I do not want to deny that the cries of justice may be the same as the cries echoing world opinion. However, the demands of world opinion and the demands of justice may be in contradiction to each other.

In the present case, however, a contradiction between the demands of world opinion for a trial against Krupp *in absentia* and the demands of justice exists because, as I just related, it would violate the recognized principles of the legal procedures of all states and especially Article 12 of the Charter, to try a mentally deranged man who cannot defend himself in a trial in which everything is at stake for the defendant, — his honor, his existence, and above all, the question of whether he belongs to the accursed circle of the arch-war criminals who brought such frightful misery to humanity and to their own Fatherland. I do not even wish, however, to put the disadvantages and dangers for the man and the interests of the defendant into the foreground. Much more significant are the dangers and disadvantages of such an unusual procedure for basic justice, because the procedure against such a defendant, who is unfit for trial due to his total inability to conduct his defense properly, cannot guarantee a just and right decision. This danger for basic justice, must, in my opinion, be avoided by a court of

such unequalled world historical importance, which has assumed the noble and holy task, by punishment of the war criminals, of preventing the repetition of such a horrible war as the second World War and of opening the gates to permanent peace for all peoples of the earth.

THE PRESIDENT: Mr. Justice Jackson, do you oppose the motion?

MR. JUSTICE ROBERT H. JACKSON (Chief of Counsel for the United States): Appearing in opposition to this motion, I should, perhaps, first file with the Tribunal my commission from President Truman to represent the United States in this proceeding. I will exhibit the original commission and hand a photostat to the Secretary.

I also speak in opposition to this motion on behalf of the Soviet Union and with the concurrence of the French Delegation which is present. I fully appreciate the difficulties which have been presented to this Tribunal in a very loyal fashion by the distinguished representative of the German legal profession who has appeared to protect the interests of Krupp, and nothing that I say in opposing this motion is to imply any criticism of Counsel for Krupp who is endeavoring to protect the interest of his client, as it is his duty to do, but he has a client whose interests are very clear.

We represent three nations of the earth, one of which has been invaded three times with Krupp armaments, one of which has suffered in this war in the East as no people have ever suffered under the impact of war, and one of which has twice crossed the Atlantic to put at rest controversies insofar as its contribution could do so, which were stirred by German militarism. The channel by which this Tribunal is to interpret the Charter in reference to this matter is the interest of justice, and it cannot ignore the interests that are engaged in the Prosecution any more than it should ignore the interests of Krupp.

Of course, trial *in absentia* has great disadvantages. It would not comply with the constitutional standard for citizens of the United States in prosecutions conducted in our country. It presents grave difficulties to counsel under the circumstances of this case. Yet, in framing the Charter, we had to take into account that all manner of avoidances of trial would be in the interests of the defendants, and therefore, the Charter authorized trial *in absentia* when in the interests of justice, leaving this broad generality as the only guide to the Court's discretion.

I do not suggest that Counsel has overstated his difficulties, but the Court should not overlook the fact that of all the defendants at this Bar, Krupp is unquestionably in the best position, from the point of view of resources and assistance, to be defended. The

sources of evidence are not secret. The great Krupp organization is the source of most of the evidence that we have against him and would be the source of any justification. When all has been said that can be said, trial *in absentia* still remains a difficult and an unsatisfactory method of trial, but the question is whether it is so unsatisfactory that the interests of these nations in arraigning before your Bar the armament and munitions industry through its most eminent and persistent representative should be defeated. In a written answer, with which I assume the members of the Tribunal are familiar, the United States has set forth the history of the background of the Defendant Krupp, which indicates the nature of the public interest that pleads for a hearing in this case.

I will not repeat what is contained beyond summarizing that for over 130 years the Krupp enterprise has flourished by furnishing the German military machine its implements of war. During the interval between the two world wars, the present defendant, Krupp von Bohlen und Halbach, was the responsible manager, and during that time his son, his eldest son, Alfried, was initiated into the business in the expectation that he would carry on this tradition. The activities were not confined to filling orders by the Government. The activities included the active participation in the incitement to war, the active breaking up through Germany's withdrawal of a disarmament conference and the League of Nations; the active political campaigning in support of the Nazi program of aggression in its entirety.

It was not without profit to the Krupp enterprises, and we have recited the spectacular rise of its profits through aiding to prepare Germany for aggressive war. So outstanding were these services that this enterprise was made an exception to the nationalization policy and was perpetuated by Nazi decrees as a family enterprise in the hands of the eldest son, Alfried.

Now it seems to us that in a trial in which we seek to establish the principle juridically, as it has been established by treaties, conventions, and international custom, that the incitement of an aggressive war is a crime, it would be unbelievable that the enterprise which I have outlined to you should be omitted from consideration.

Three of the prosecuting nations ask the permission of this Tribunal immediately to file an amendment to the Indictment, which will add the name of Alfried Krupp von Bohlen und Halbach at each point in the Indictment after the name of Gustav Krupp von Bohlen, and that the Tribunal make immediate service of the Indictment on son Alfried, now reported to be in the hands of the British Army of the Rhine.

I have to face the problem whether this will cause delay. All of the nations at your Bar deplore delay. None deplore it more

than I, who have long been active in this task, but if the task in which we are engaged is worth doing at all, it is worth doing well; and I do not see how we can justify the placing of our convenience or a response to an uninformed demand for haste ahead of doing this task thoroughly. I know there is impatience to be on with the trial, but I venture to say that very few litigations in the United States involving one plaintiff and one defendant under local transactions in a regularly established court come to trial in 8 months after the event, and 8 months ago the German Army was in possession of this room and in possession of the evidence that we have now. So we make no apology for the time that has been taken in getting together a case which covers a continent, a decade of time, and the affairs of most of the nations of the earth.

We do not think the addition of Alfried Krupp need delay this Trial by the usual allowance of time to the defendant. The work already done on behalf of Krupp von Bohlen would no doubt be available to Alfried. The organization Krupp is the source of the documents and of most of the evidence on which the Defense will depend. If this request of the United States of America, the Soviet Union, and the French Republic is granted, and Alfried Krupp is joined, we would then have no objection to the dismissal, which is the real substance of the motion, of the elder Krupp, whose condition doubtless precludes his being brought to trial in person.

THE PRESIDENT: Mr. Justice Jackson, may I draw your attention to Page 5 of the written statement of the United States? At the bottom of Page 5 you say, "the prosecutors representing the Soviet Union, the French Republic, and the United Kingdom unanimously oppose inclusion of Alfried Krupp", and then you go on to say on the fourth line of Page 6, "immediately upon service of the Indictment, learning the serious condition of Krupp, the United States again called a meeting of prosecutors and proposed an amendment to include Alfried Krupp. Again the proposal of the United States was defeated by a vote of three to one." Are you now telling the Tribunal that there has been another meeting at which the prosecutors have reversed their two previous decisions?

MR. JUSTICE JACKSON: Your Honor, I understand the French Delegation has filed a statement with the Secretary of the Tribunal, which joins in the position of the United States. I have just been called, on behalf of the Soviet Prosecutor, General Rudenko, who is now in Moscow, to advise us that the Soviet Delegation now joins, and I was this morning authorized to speak in their behalf. Both those delegations desire to reduce, as, of course, do we, any possible delay to a minimum.

I may say that the disagreement at the outset over the inclusion of Alfried was due not to any difference of opinion as to whether

this industry should be represented in this Trial, but it was not understood that the condition of the elder Krupp was such as would preclude his trial. It was believed that it was . . .

THE PRESIDENT: Mr. Justice Jackson, forgive my interrupting you, but the words that I have just read show that the condition of Krupp was comprehended at the time. The words are: "Immediately upon service of the Indictment, learning of the serious condition of Krupp, the United States again called a meeting of Prosecutors, and again the proposal of the United States was defeated by a vote of three to one."

MR. JUSTICE JACKSON: Your Honor is referring to the meeting which was held after the Indictment had been served. I am referring to the original framing of the Indictment, so we are speaking of two different points of time.

THE PRESIDENT: I see.

MR. JUSTICE JACKSON: It was felt that it would be very difficult to manage a trial which included too many defendants, and that inasmuch as Gustav Krupp von Bohlen was in, it was unnecessary to have others. When the Indictment was served, the information came to us of his condition, and we called the meeting. It was not then anticipated with certainty that the Trial could not proceed. His condition was then, we knew, serious, but the extent of it was not known to us as definitely as it is now; and it was felt by the other three prosecuting nations at that time that it would not be necessary to make this substitution.

In the light of what has now happened, both the Soviet Union and the French Republic join in the position of the United States.

THE PRESIDENT: Then may I ask you how long delay you suggest should be given, if your motion for the addition of Alfried Krupp were granted?

MR. JUSTICE JACKSON: Of course I hesitate to say what might be reasonable from the point of view of the defendants, but it would seem to me that in the first place, he might be willing to step into his father's place without delay; but in any case that the delay should not postpone the commencement of this trial beyond the 2d day of December, which I think is Monday, which would enable him, it seems to me, with the work that has been done, to prepare adequately, and would enable us to serve immediately. If permission is granted, we can immediately make the service; and, of course, they have already had full information of the charges, and access to the documents.

THE PRESIDENT: Is he not entitled under the Charter and the rules of procedure to 30 days from the service of the Indictment upon him?

MR. JUSTICE JACKSON: I think the Charter makes no such requirement, and I understand that the rules of the Court are within the control of the Court itself.

THE PRESIDENT: Would you suggest that he should be given less time than the other defendants?

MR. JUSTICE JACKSON: I have no hesitation in sponsoring that suggestion, for the reason that the work that has already been done presumably would be available to him; and as I have suggested, of all the defendants, the Krupp family is in the best position to defend, from the point of view of resources, from the point of view of the reach of their organization; and, I am sure you will agree, they are not at all handicapped in the ability of counsel.

THE PRESIDENT: I have one last question to put to you: Can it be in the interest of justice to find a man guilty, who, owing to illness, is unable to make his defense properly?

MR. JUSTICE JACKSON: Assuming the hypothesis that Your Honor states, I should have no hesitation in saying that it would not be in the interests of justice to find a man guilty who cannot properly be defended. I do not think it follows that the character of charges that we have made in this case against Krupp, Gustav Krupp von Bohlen, cannot be properly tried *in absentia.* That is an arguable question; but it can be assumed that all of the acts which we charge him with are either documentary, or they were public acts. We are not charging him with the sort of thing for which one resorts to private sources. The one serious thing that seems to me, is that he would not be able to take the stand himself in his defense, and I am not altogether sure that he would want to do that, even if he were present.

THE PRESIDENT: But you have stated, have you not, and you would agree, that according to the Municipal Law of the United States of America, a man in the physical and mental condition of Krupp could not be tried.

MR. JUSTICE JACKSON: I think that would be true in most of the jurisdictions.

THE PRESIDENT: Thank you.

Mr. Attorney General.

SIR HARTLEY SHAWCROSS (Chief Prosecutor for the United Kingdom): May it please you, Mr. President: The matters which I desire to submit to the Tribunal can be shortly stated, and first amongst them I should say this: There is no kind of difference of principle between myself and my colleagues, representing the other three prosecution Powers, none whatsoever. Our difference is as to method and as to procedure. In the view of the British Government,

this Trial has been enough delayed, and matters ought now to proceed without further postponement.

Before I say anything in regard to the application which is before the Tribunal, on behalf of Gustav Krupp von Bohlen, may I say just one word about our position in regard to industrialists generally. Representing, as I do, the present British Government, it may be safely assumed by the Tribunal that I am certainly not less anxious than the representatives of any other state the part played by industrialists in the preparation and conduct of the war should be fully exposed to the Tribunal and to the world. That will be done, and that will be done in the course of this Trial, whether Gustav Krupp von Bohlen or Alfried Krupp are parties to the proceedings or not. The defendants who are at present before the Tribunal, are indicted for conspiring not only with each other, but with divers other persons; and if it should be the decision of the Tribunal that Gustav Krupp von Bohlen should be dismissed from the present proceedings, the evidence as to the part which he, his firm, his associates, and other industrialists played in the preparation and conduct of the war, would still be given to this Tribunal, as forming part of the general conspiracy in which these defendants were involved with divers other persons, not now before the Court.

Now, then, in regard to the application which is before the Court on behalf of Gustav Krupp von Bohlen, the matter is, as it seems to me, entirely one for the Tribunal; and I would only wish to say this about it: It is an application which, in my submission, must be treated on its own merits. This is a court of justice, not a game in which you can play a substitute, if one member of a team falls sick. If this defendant is unfit to stand his trial before this Tribunal, and whether he is fit or unfit is a matter for the Tribunal, he will be none the less unfit because the Tribunal decides not to join some other person, not at present a party to the proceedings.

There is provision under the Charter for trial *in absentia*. I do not wish to add anything which has been said in regard to that aspect of the matter by my friend, Mr. Justice Jackson, but I ask the Tribunal to deal with the application, made on behalf of Gustav Krupp von Bohlen, quite independently of any considerations as to the joinder of some other person, considerations which, in my submission, are relevant to that application. There is, however, before the Tribunal, an independent application to permit the joinder of a new defendant at this late state. I think I should perhaps say this: That as you, Mr. President, pointed out, at the last meeting of the Chief Prosecutors, at which this possibility was discussed, not for the first time, the representatives of the Provisional Government of France and of the Soviet Government were, like ourselves, as representing the British Government,

opposed to the addition of any defendant involving any delay in the commencement of these proceedings. I take no technical point upon that at all. I am content that you should deal with the matter now, as if the Chief Prosecutors had had a further meeting, and as a committee, in the way that they are required to act under the Charter, had by majority decided to make this application. I mention the matter only to explain the position in which I find myself, as the representative of the British Government, in regard to it. At the last meeting of Chief Prosecutors, there was agreement with the British view. The representatives of the other two States, as they were quite entitled to do, have since that meeting come to a different conclusion. Well, now, Sir, so far as that application is concerned, I would say only this: The case against the existing defendants, whether Gustav Krupp von Bohlen is included amongst them or not, can be fully established without the joinder of any additional person, whoever he might be. The general part played by the industrialists can be fully established without the joinder of any particular industrialist, whoever he might be. That case will indeed be developed, and will be made clear in the course of this Trial. That is not to say that Alfried Krupp should not be brought to justice. There is provision under the Charter for the holding of further trials, and it may be according to the result of the present proceedings, that hereafter other proceedings ought to be taken, possibly against Alfried Krupp, possibly against other industrialists, possibly against other people as well. At present, we are concerned with the existing defendants. For our part, the case against them has been ready for some time, and it can be shortly and succinctly stated; and in my submission to the Tribunal, the interests of justice demand, and world opinion expects, that these men should be put upon their defense without further delay.

And I respectfully remind the Tribunal of what was said at the opening session in Berlin by General Nikitchenko, in these terms:

> "The individual defendants in custody will be notified that they must be ready for trial within 30 days after the service of the Indictment upon them. Promptly thereafter, the Tribunal shall fix and announce the date of the Trial in Nuremberg, to take place not less than 30 days after the service of the Indictment; and the defendants shall be advised of such date as soon as it is fixed."

And then these words:

> "It must be understood that the Tribunal, which is directed by the Charter to secure an expeditious hearing of the issues raised by the charges will not permit any delay, either in the preparation of the defense, or of the Trial."

Of course, if it happened that Alfried Krupp were prepared to step into his father's shoes in this matter, without any delay in the

proceedings, the British Prosecutors would welcome that procedure, but if his joinder involves any further delay in the Trial of the existing defendants, we are opposed to it.

THE PRESIDENT: May I ask you: Do you agree that according to the Municipal Law of Great Britain, in the same way that I understood it to be the law of the United States of America, a man in the mental and physical condition of Gustav Krupp could not be tried?

SIR HARTLEY SHAWCROSS: I do, Sir. I take the same view, if I may say so, with respect, as Mr. Justice Jackson took upon the question you addressed to him.

THE PRESIDENT: And in such circumstances, the prosecution against him would not be dismissed, but he would be detained during the pleasure of the sovereign power concerned.

SIR HARTLEY SHAWCROSS: Yes, Sir.

THE PRESIDENT: That is one question that I wanted to put to you.

Do you then suggest that, in the present circumstances, Gustav Krupp ought to be tried in his absence, in view of the medical reports that we have before us?

SIR HARTLEY SHAWCROSS: Well, it is a matter which is entirely in the discretion of the Tribunal, and which I do not wish to press in any way; but as the evidence involving his firm will in any event be laid before the Tribunal, it might be convenient that he should be represented by counsel, and that the Tribunal, in arriving at its decision, should take account, as it necessarily would, of his then condition.

THE PRESIDENT: Is there any precedent for such a course as that, to hold that he could not be tried and found guilty or not guilty and yet to retain counsel to appear for him before the Tribunal?

SIR HARTLEY SHAWCROSS: No, Sir, I was not suggesting that he should not be treated as being an existing defendant before the Tribunal and held guilty or not. I was dealing with the subsequent course which the Tribunal might adopt in regard to him if they held him guilty of some or all of these offenses.

THE PRESIDENT: But I thought you agreed that according to, at any rate, Municipal Law, a man in his physical condition ought not be tried.

SIR HARTLEY SHAWCROSS: I am not agreed that according to English Municipal Law he could not be tried.

THE PRESIDENT: And that law is based upon the interests of justice?

SIR HARTLEY SHAWCROSS: Mr. President, I cannot dispute that, but our law of course contains no provision at all for trial *in absentia.* Express provision is made for such trials in the Charter constituting this Tribunal, provided that the Tribunal considers it in the interests of justice.

THE PRESIDENT: What exactly is it you are suggesting to us, that he should be tried in absence or that he should not be tried in absence?

SIR HARTLEY SHAWCROSS: Mr. President, we have suggested that advantage should be taken of the provision for trial *in absentia,* but as I said at the beginning, it is, as it appears to me, entirely a matter for the discretion of the Tribunal, not one in which I wish to press any particular view.

THE PRESIDENT: Does the Chief Prosecutor for the Soviet Union desire to speak? You were authorized, I think, Mr. Justice Jackson, to speak on behalf of the Chief Prosecutor of the Soviet Union.

MR. JUSTICE JACKSON: I was authorized to state that they take the same position as the United States. I don't know that in answering their questions I would have always given the answers that they would have given. I understand, for example, that they do try cases *in absentia,* and I think their position on that would be somewhat different from the position I have given.

THE PRESIDENT: This question I asked you, of course, was directed solely to the Municipal Law of the United States. Does the Chief Prosecutor of the Soviet Union wish to address the Tribunal?

COLONEL Y. V. POKROVSKY (Deputy Chief Prosecutor for the U.S.S.R.): No.

THE PRESIDENT: Then does the Chief Prosecutor for the French Republic wish to address the Tribunal?

M. CHARLES DUBOST (Deputy Chief Prosecutor for the French Republic): It would be easy to justify the position taken today by the French Delegation by merely reminding oneself that on numerous occasions the French Delegation has advocated the immediate preparation of a second trial in order that it might be possible to proceed with it as soon as the first trial was completed. We could in this way have prosecuted the German industrialists without any interruption. This point of view has never been adopted. We have rallied to the point of view of the United States as being the most expedient and most susceptible of giving complete satisfaction to French interests. We are anxious that Krupp the son should be tried. There are serious charges against him, and no one could possibly understand that there should be no

representative in this trial of the greatest German industrial enterprise, as being one of the principal guilty parties in this war. We should have preferred that a second trial be made against the industrialists, but since this second trial is not to take place, we consider the presence of Alfried Krupp to be absolutely necessary.

THE PRESIDENT: What is the position, which you take up if the substitution of Alfried Krupp would necessarily lead to delay?

M. DUBOST: I beg your pardon, Mr. President, but I believe you have in your hand a second note which I submitted this morning to the Court after having received a telephone call from Paris.

THE PRESIDENT: I have in my hand a document of 13 November 1945, signed by you, I think.

M. DUBOST: That is right. There is, however, a supplementary note, which I submitted this morning, according to which I adopt the same viewpoint as that expressed by Mr. Justice Jackson. I was in fact able to find out between the document of last night and that of this morning the consequences that would be brought about . . .

THE PRESIDENT: Perhaps the best course would be to read this document which has now been put before us.

M. DUBOST: "We consider that the trial of Krupp's father is not possible at the present time. The trial of a dying old man who is unable to attend is out of the question. We are anxious that Krupp's son should be prosecuted for there are very serious charges against him. We had asked up to this point that he should be prosecuted without any delay in the trial, but for reasons of expediency which led us to adopt this point of view, this has ceased to be a pressing problem since the Soviet Delegation has adopted the point of view of Mr. Justice Jackson. Consequently we no longer raise any objection, and we likewise have come to this point of view."

THE PRESIDENT: Does what you say now mean that you wish Alfried Krupp to be substituted notwithstanding the fact that it must cause delay?

M. DUBOST: Yes, that's right.

THE PRESIDENT: Are you suggesting on behalf of France that Gustav should be tried in his absence or not?

M. DUBOST: No, no, not that, no.

THE TRIBUNAL (Mr. Volchkov): What does the French prosecutor and the French Republic offer so far as Gustav Krupp is concerned?

M. DUBOST: As to Krupp, the father, we consider it is not possible to prosecute him because of the state of his health; he will not be able to appear before the Court. He will not be able to defend himself. He will not be able to tell us about his acts.

It is necessary to drop his case or to postpone the Trial to a time when he shall be cured, unless before that he appears before the judgment of God. We also believe, since we cannot obtain a second trial against the industrialists, that it is necessary to substitute Krupp, the son, against whom serious charges exist, for Krupp, the father, who cannot be tried.

THE PRESIDENT: Do you agree or disagree with the Attorney General for Great Britain that in the course of the Trial, whether Gustav Krupp or Alfried Krupp are included as defendants, the evidence against the industrialists of Germany must be exposed?

M. DUBOST: We have been anxious, Mr. President, that a second trial should be prepared immediately to follow the first trial in which the question of the industrialists would be thoroughly examined. Since it is not possible to have a second trial, we are anxious that one of the representatives of the Krupp firm, who is personally responsible and against whom there are charges, shall be called upon to appear before this Tribunal to defend himself against the charges that we shall bring against the Krupp firm, and in a more general manner also against the industrialists who were associated with the Krupp firm and who participated in the conspiracy which is presented in the Indictment, who supported the seizure of power by the Nazis, supported the Nazi Government and propaganda, financed the Nazis and finally helped the rearmament of Germany in order that it might continue its war of aggression.

THE PRESIDENT: Forgive me. I don't think you have answered the question which I put to you. Do you agree with the Attorney General that whether Gustav Krupp or Alfried Krupp are or are not defendants in this Trial, the evidence against the German industrialists will necessarily be thoroughly exposed in the course of bringing forward the evidence of the conspiracy charged?

M. DUBOST: I agree that it is possible to bring the proof of a conspiracy without this or that member of the Krupp family being brought before the Court, but it will only be fragmentary proof and evidence, because there are personal responsibilities which go beyond the general responsibilities of the authors of the conspiracy, and these personal responsibilities are particularly attributable to Krupp the son and Krupp the father.

THE TRIBUNAL (M. De Vabres): You said just now that it was your opinion that the name of Krupp the son should be substituted for that of Krupp the father? Do you really mean the word "substitute"? Did you use this word intentionally or do you not rather wish to say that it was your opinion that there should be an amendment to the Indictment and that we should apply a supplement to the Indictment? Do you consider that you can propose to the Court to substitute one name for another in the Indict-

ment or do you suggest on the contrary a supplement be added to the Indictment?

M. DUBOST: I have thought for a long time that it was necessary to propose an amendment to the Indictment. It is still my opinion, but it is not legally possible to modify the Indictment by a supplement.

THE PRESIDENT: Thank you. Does counsel for the Defendant Gustav Krupp wish to address the Tribunal again?

DR. KLEFISCH: I deduce from the explanation of the Prosecution that the principal objection against our point of view is that it would not be in accordance with justice if the Trial were to be carried out in absence of Krupp senior. When, in representing the opposite point of view, it is pointed out that the public opinion of the entire world demands the trial against the defendant, Mr. Krupp, then the main reason offered is that Krupp senior is to be regarded as one of the principal war criminals. I have already pointed out that this reasoning would be an anticipation of the final judgment of the Court. It is my opinion, that this is not the place and the time to discuss these questions and I wish to limit myself to what I already said before: Namely, that all that has been said in this direction is for the moment only a thesis of the Prosecution, which, in the course of the Trial, will be confronted with an antithesis of the Defense, so that then the High Court can arrive at a synthesis of this thesis and antithesis and make a fair judgment.

One more point regarding this question:

It has also been pointed out that Krupp senior, could be tried *in absentia* for the reason that the entire evidence regarding the question of guilt has already been presented and was no secret. In view of the facts this is not correct.

So far we have seen only a part of the evidence, that is, that which is contained in the bundle of documents. But may I point out that from the firm of Krupp and the private quarters of the Krupp family, the entire written material which consisted of whole truck-loads was confiscated, and we did not see any of this material. Thus, the defense is difficult to undertake, since, due to the confiscation of this entire material, only the Defendant Krupp senior would be in a position to describe at least to a certain extent the documents necessary for his defense, so that they could be submitted in the regular form of application for evidence to this High Court.

As far as the question of an additional indictment against the son, Alfried Krupp, is concerned I wish to state first of all that I have not officially been charged with the defense of this defendant. I suppose, however, that I will be charged with the defense and that is why, with the permission of the Court, I wish to say a few words here about this motion, perhaps as a representative

without commission. I do not know whether it is possible, that is, legally possible, subsequently to put Mr. Alfried Krupp on the list of the principal war criminals. However, even if I were to let this legal possibility open to discussion, I should like to call attention to the following:

In view of the changed situation, it seems to me to be a bit strange, to say the least, if Alfried Krupp were to be put on the list as a principal war criminal now, not because he was marked as one from the beginning, but because his father cannot be tried. I see in that a certain game played by the representative of the United States which cannot be sanctioned by the Court in my opinion.

In addition, I wish to make the following brief remark:

In case a supplementary indictment should be made against Alfried Krupp, and if I were definitely charged with his defense, my conscience would oblige me to request that the period of 30 days between the serving of the Indictment and the main Trial as provided in Rule 2 (a), would have to be kept under all circumstances.

Finally, I should like to point out the following:

In conclusion, I should like to emphasize that, so far as I am informed, the circumstances and facts regarding the person of Alfried Krupp are basically different from the circumstances concerning the person of the present defendant, Krupp senior. In the documents that have been put at our disposal so far, and which are bound in one volume, I have hardly found a single word about any complicity or participation of Alfried Krupp in the crimes with which Krupp senior is charged. I should also like to emphasize that, as has already been discussed, Alfried Krupp became the owner of the Krupp firm, I believe, only in November 1943 and that previously, from 1937 to 1943, he was merely director of one department of the entire concern, but in this capacity he did not have the slightest influence on the management of the firm, nor did he have anything to do with orders for the production and delivery of war materials.

For the reasons stated, I believe I am justified in expressing the wish to refrain from introducing Alfried Krupp into this Trial of the principal war criminals.

THE PRESIDENT: The Tribunal will adjourn now and announce its decision on this application later.

[The Tribunal adjourned until 15 November 1945 at 1000 hours.]

PRELIMINARY HEARING

Thursday, 15 November 1945

THE PRESIDENT: The Tribunal has invited the Defense Counsel to be present here today as it desires that they shall thoroughly understand the course which the Tribunal proposes the proceedings at trial should take.

The Tribunal is aware that the procedure provided for by the Charter is in some respects different from the procedure to which Defense Counsel are accustomed. They therefore desire that Defense Counsel should be under no misapprehension as to course which must be followed.

Article 24 of the Charter provides for the reading of the Indictment in Court, but in view of its length, and the fact that its contents are now probably well known, it may be that Defense Counsel will not think it necessary that it should be read in full.

The opening of cases for the Prosecution will necessarily take a long time, and during that time Defense Counsel will have an opportunity to complete their preparations for defense.

When witnesses for the Prosecution are called, it must be understood that it is the function of Counsel for the Defense to cross-examine the witnesses, and that it is not the intention of the Tribunal to cross-examine the witnesses themselves.

The Tribunal will not call upon the Defense Counsel to state what evidence they wish to submit until the case for the Prosecution has been closed.

As Defense Counsel already know, the General Secretary of the Tribunal makes every effort to obtain such evidence, both witnesses and documents, as the Defense wish to adduce and the Tribunal approves.

The General Secretary is providing, and will provide, lodging, food, and transportation for Defense Counsel and witnesses while in Nuremberg. And though the living conditions provided may not be all that can be desired, Defense Counsel will understand that there are great difficulties in the present circumstances and efforts will be made to meet any reasonable request.

Defense Counsel have been provided with a Document Room and an Information Center where documents translated into German are available for the Defense, subject to the necessary security regulations. It is important that Defense Counsel should notify the General Secretary as long as possible, and at least 3 weeks in ordinary cases, in advance, of witnesses or documents they require.

The services which Defense Counsel are performing are important public services for the interests of justice, and they will have the protection of the Tribunal in the performance of their duties.

In order that the Trial should proceed with due expedition, it would seem desirable that Defense Counsel should settle among themselves the order in which they wish to cross-examine the Prosecution witnesses and propose to present their defenses, and that they should communicate their wishes in this regard to the General Secretary.

I hope that what I have said will be of assistance to Defense Counsel in the preparation of their defenses. If there are any questions in connection with what I have said which they wish to ask, I will endeavor to answer them.

DR. ALFRED THOMA (Counsel for Defendant Rosenberg): Mr. President.

THE PRESIDENT: Will you come to the desk please, if you wish to speak. Will you state your name and for whom you appear here?

DR. THOMA: Dr. Thoma, defense counsel for the Defendant Rosenberg.

THE PRESIDENT: Yes.

DR. THOMA: I should like to ask whether the Defense will immediately get copies of the interrogation of witnesses.

THE PRESIDENT: Copies of the Indictment? Those have been served upon each defendant. Do I understand that you want further copies for the use of defendants' counsel?

DR. THOMA: May I put my question more precisely? I presume that all the statements of the defendants are to be taken down in shorthand, and I would like to ask whether these will then be translated into German and given to the Defense Counsel as soon as possible.

THE PRESIDENT: If you mean a transcript of the evidence which is given before the Tribunal, that will be taken down, and if it is given in a language other than German it will be translated into German and copies furnished to defendants' counsel. If it is in German it will be furnished to them in German.

DR. THOMA: Will we get copies of the interrogation of all witnesses?

THE PRESIDENT: Yes; that is what I meant by a transcript of the evidence given before the Tribunal. That will be a copy, in German, of the evidence of each witness.

DR. THOMA: Thank you.

DR. RUDOLPH DIX (Counsel for Defendant Schacht): Your Lordship, gentlemen of the Tribunal, my colleagues of the Defense

have entrusted me with the honorable task of expressing our thanks for the words you have addressed to the Defense Counsel. We members of the Defense consider ourselves the associates of the Tribunal in reaching a just verdict and we have full confidence in Your Lordship's wise and experienced conduct of the Trial proceedings.

Your Lordship may be convinced that in this spirit we shall participate in the difficult task of reaching a just decision in the case before the Tribunal.

THE PRESIDENT: I assume that there are no further questions at the present stage which Counsel for the Defense wish to ask. They will understand that if at any stage in the future they have inquiries which they wish to make, they should address them to the General Secretary and they will then be considered by the Tribunal.

The Tribunal will now adjourn until 2 o'clock, when the application on behalf of the Defendant Streicher will be heard.

[The Tribunal adjourned until 1400 hours.]

THE PRESIDENT: I understand that there are some counsel for the defendants present here today, who were not here yesterday and who may not understand the use of these earphones and dials. Therefore, I explain to them that Number 1 on the dial will enable them to hear the evidence in the language in which it is given, Number 2 will be in English, Number 3 in Russian, Number 4 in French, and Number 5 in German.

I will now read the judgment of the Tribunal in the matter of the application of counsel for Gustav Krupp von Bohlen for postponement of the proceedings against the defendant.

Counsel for Gustav Krupp von Bohlen has applied to the Tribunal for postponement of the proceedings against this defendant on the ground that his physical and mental condition are such that he is incapable of understanding the proceedings against him and of presenting any defense that he may have.

On November 5 the Tribunal appointed a medical commission composed of the following physicians:

R. E. Tunbridge, Brigadier, O.B.E., M.D., M.Sc., F.R.C.P., Consulting Physician, British Army of the Rhine.

René Piedelièvre, M.D., Professor on the Faculty of Medicine of Paris; Expert for the Tribunal.

Nicholas Kurshakov, M.D., Professor of Medicine, Medical Institute of Moscow; Chief Internist, Commissariat of Public Health, Union of Soviet Socialist Republics.

Eugene Sepp, M.D., Emeritus Professor of Neurology, Medical Institute of Moscow; Member, Academy of Medical Science, Union of Soviet Socialist Republics.

Eugene Krasnushkin, M.D., Professor of Psychiatry, Medical Institute of Moscow.

Bertram Schaffner, Major, Medical Corps, Neuropsychiatrist, Army of the United States.

The commission has reported to the Tribunal that it is unanimously of the opinion that Gustav Krupp von Bohlen suffers from senile softening of the brain; that his mental condition is such that he is incapable of understanding court procedure and of understanding or cooperating in interrogations; that his physical state is such that he cannot be moved without endangering his life; and that his condition is unlikely to improve but rather will deteriorate further.

The Tribunal accepts the findings of the medical commission, to which exception is taken neither by the Prosecution nor by the Defense.

Article 12 of the Charter authorizes the trial of a defendant *in absentia* if found by the Tribunal to be "necessary in the interests of justice." It is contended on behalf of the Chief Prosecutors that in the interest of justice, Gustav Krupp von Bohlen should be tried *in absentia,* despite his physical and mental condition.

It is the decision of the Tribunal that upon the facts presented the interests of justice do not require that Gustav Krupp von Bohlen be tried *in absentia.* The Charter of the Tribunal envisages a fair trial, in which the Chief Prosecutors may present the evidence in support of an indictment and the defendants may present such defense as they may believe themselves to have. Where nature rather than flight or contumacy has rendered such a trial impossible, it is not in accordance with justice that the case should proceed in the absence of a defendant.

For the foregoing reasons, the Tribunal orders that:

1. The application for postponement of the proceedings against Gustav Krupp von Bohlen is granted.

2. The charges in the Indictment against Gustav Krupp von Bohlen shall be retained upon the docket of the Tribunal for trial hereafter, if the physical and mental condition of the defendant should permit.

Further questions raised by the Chief Prosecutors, including the question of adding another name to the Indictment, will be considered later.

The Tribunal will now hear the application on behalf of the Defendant Streicher.

Will the Counsel state his name?

DR. HANS MARX (Counsel for Defendant Streicher): Your Honors, as Counsel for the Defendant Julius Streicher, I took the liberty some time ago of requesting a postponement in the opening date of the Trial, because the time at my disposal for making preparations appeared to me insufficient, in view of the importance of the case.

This morning, however, the President of the Court outlined the course of the proceedings of the Trial and his explanations have made it quite clear that the Defense will have adequate time at its disposal to continue preparations for the case of each client even after the opening of the Trial. Any objections on my part are thereby removed, and accordingly I withdraw my application as unsubstantiated.

Your Honors, may I use this opportunity to make a suggestion with regard to the case of the Defendant Streicher.

In view of the exceptional nature of the case and of the difficulties facing the Defense in handling it, may I suggest that the Tribunal consider whether a psychiatric examination of the Defendant Streicher would not be proper. Defense Counsel should have at his disposal all the evidence on the nature, personality, and motives of the defendant which appears necessary to enable him to form a clear picture of his client.

And this, of course, is also true of the Tribunal.

In my own interests I consider it essential that such an examination be authorized by the Tribunal. I emphasize particularly that this is not a formal motion: "It is not a motion but a proposal." *[Note: These words were spoken in English.]* I deem it necessary as a precaution in my own interests, since my client does not desire an examination of this sort, and is of the opinion that he is mentally completely normal. I myself cannot determine that; it must be decided by a psychiatrist.

I, therefore, ask the Tribunal to consider this proposal, and, if the suggestion, under the circumstances, appears both requisite and necessary, to choose and appoint a competent expert to conduct the examination.

That is what I wished to say before the opening of the proceedings.

THE PRESIDENT: One moment. It appears to the Tribunal that such suggestions as you have now made, ought to be in the form of a formal motion or application and that it ought to be in writing and that if, as you say, the Defendant Streicher does not wish it or is unwilling that such an examination should be made, then your application ought to state in writing that the Defendant Streicher refuses to sign the application.

If you wish to make such a motion you are at liberty to make it, in writing.

DR. MARX: Mr. President, may I be allowed to say briefly that it is precisely because the defendant does object to my submitting such an application that I feel obliged to make this request here publicly, and inform the Tribunal that I am bound by my client's attitude and therefore not in a position to submit this suggestion in writing. Without my client's permission I cannot make this suggestion in writing, and I am consequently forced to convey it to the Tribunal verbally, since I myself consider it necessary as a precaution in my own interest.

THE PRESIDENT: But you understand from what I say to you, that if you wish to make this suggestion, you must make the motion in writing and you can, on that writing, state that the Defendant Streicher is not prepared to sign the application.

DR. MARX: Thank you, Mr. President, for your statement; I shall not fail to act, as you suggest.

THE PRESIDENT: Do the Chief Prosecutors wish to make any statement?

COLONEL ROBERT G. STOREY (Executive Trial Counsel for the United States): May it please the Court:

The position of Counsel for Defendant Streicher emphasizes a suggestion made by the Prosecutors this morning, namely, that all motions and all requests from Counsel be reduced to writing, prior to submission to the Court and the suggestions, in writing, were filed with the General Secretary since the meeting this morning.

While I am on my feet, if it may please the Court, may I make a brief statement in connection with the efforts of the Prosecutors to furnish to the Defense Counsel evidence and documents in which they may be interested, if that meets with the approval of the Court.

THE PRESIDENT: Yes.

COL. STOREY: With reference to Defendant Streicher's second point in his motion, namely, that the Prosecutors be required to furnish certain documents, they are being furnished, and will be furnished in the future.

Secondly, with reference to the film on concentration camps, which he requests be shown to Defense Counsel in advance of the time of presenting the film, this request will also be complied with by the Prosecutors.

Also, for the information of the Defense Counsel, there has been established in Room 54, in this Courthouse, what is known as the Defendants' Information Center, operated jointly by the four Chief Prosecutors. In that room there has been deposited a list of documents upon which the Prosecution relies. Secondly, if further documents are relied upon by the prosecutors, lists will be furnished to Defense Counsel before they are introduced into evidence or

offered to the Court, and also, they will have the opportunity to examine copies of those documents in their own language.

May I also suggest that most Defense Counsel have availed themselves of that privilege and those who had not, have been notified and they are now, as of this date, all of them, making use of the facilities provided, which include rooms for conferences, typewriters, when necessary, and other assistance.

I want to make that statement for the information of the Defense Counsel.

THE PRESIDENT: I understand the Soviet Chief Prosecutor wishes to address the Tribunal.

COL. POKROVSKY: In connection with the evidence just submitted to the Tribunal by Counsel representing the interests of Defendant Streicher, I consider it my duty to inform the Tribunal that during the last interrogation made by the Delegation of the Soviet Union, the Defendant Streicher, about whom it is specifically said in the Indictment, Counts One and Four, that he had incited to the persecution of the Jews, stated that he had been speaking from a Zionist point of view.

This declaration or, more precisely, this testimony, immediately produced certain doubts as to the mental stability of the defendant.

It is not the first time that persons, now standing their trial, have attempted to delude us about their mental condition. I refer in particular to the Defendant Hess. In the case of Hess the Tribunal, to my knowledge already possesses . . .

THE PRESIDENT: One moment. We are not hearing any application with reference to Streicher's sanity now, nor any application with reference to Hess. We have simply informed Counsel for Streicher that if he wishes to make an application in respect of his defendant's sanity or mental condition, he must make that application in writing. If he does make such an application in writing you will have full opportunity of opposing the application.

COL. POKROVSKY: What I have in mind is not to offer an opinion on the deductions and the petition of the Defense, but to inform the Tribunal of a fact which may cause much complication if we do not act on it immediately. Seeing that the Tribunal has at its disposal a number of competent medical personnel, it would appear to me most expedient that the Tribunal should entrust these specialists with the examination of the Defendant Streicher in order to establish definitely whether he is or is not in full possession of his mental capacities.

If we do not do so now, the necessity may arise in the course of the Trial and if the question of Streicher's sanity arises after the beginning of the Trial, then it may delay the pro-

ceedings and impede our work. If the Tribunal deems my suggestion in order, we would, before the Trial starts, have sufficient time to request from this commission of specialists a statement on his mental condition.

THE PRESIDENT: One moment. If I rightly understand what the Chief Soviet Prosecutor says, it is this: That if any question of the sanity of the Defendant Streicher arises it will be convenient that he should be examined now at once whilst the medical officers of the Soviet Union are in Nuremberg. If that is so, then if you think it is more convenient that Streicher should be examined by doctors at the present moment on account of the presence of the distinguished doctors from the Soviet Union being in Nuremberg, you are at liberty to make a written motion to that effect to the Tribunal at any time.

Do any of the other Chief Prosecutors wish to address the Tribunal?

(There was no response.)

Then the Tribunal will deal with the application of the Defendant Streicher as follows:

His application for postponement, which is numbered 1 on his written application, has been withdrawn. His other two applications, numbered 2 and 3, which are agreed to by the Chief Prosecutors, are granted.

The Tribunal will now adjourn.

[The Tribunal adjourned until 17 November 1945 at 1000 hours.]

PRELIMINARY HEARING

Saturday, 17 November 1945

THE PRESIDENT: The Tribunal would like to know whether the Chief Prosecutors wish to make a statement with reference to the Defendant Bormann.

SIR DAVID MAXWELL-FYFE (Deputy Chief Prosecutor for the United Kingdom): May it please the Tribunal, as the Tribunal are aware, the Defendant Bormann was included in the Indictment, which was filed before the Tribunal. There has been no change in the position with regard to the Defendant Bormann; nor has any further information come to the notice of the Chief Prosecutors. I think that the Tribunal are aware of the state of our information when the Indictment was filed, but it might be as well, if the Tribunal approves, if I explained what was the state of our information at the time of the filing of the Indictment, which is also the state of our information today.

There is evidence that Hitler and Bormann were together, with a number of Nazi officials, in the Chancellery area in Berlin on 30 April 1945, and were, at one stage on that day, together in Hitler's underground air raid shelter in the Chancellery gardens.

On 1 May Bormann and other Germans tried to break out of the Chancellery area in a tank. They got as far as the river Spree and tried to cross a bridge over it. A hand grenade was thrown into the tank by Russian soldiers. Three members of the party who were with Bormann in this tank have been interrogated. Two think that Bormann was killed, and the third that he was wounded. The position is, therefore, that the Prosecution cannot say that the matter is beyond probability that Bormann is dead. There is still the clear possibility that he is alive.

In these circumstances I should submit that he comes within the exact words of Article 12 of the Charter:

> "The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found."

In other words, it is not necessary to hold the man in these circumstances. The Tribunal laid down in its Rules of Procedure in Rule 2 (b) the procedure applicable to this situation:

> "Any individual Defendant not in custody shall be informed of the Indictment against him and of his right to receive the

documents specified in sub-paragraph (a) above, by notice in such form and manner as the Tribunal may prescribe."

The Tribunal prescribed that notice to the Defendant Bormann should be given in the following manner:

The notice should be read over the radio once a week for 4 weeks, the first reading to be during the week of 22 October. It should also be published in four separate issues of a newspaper circulated in the home city of Martin Bormann.

The broadcast was given in the weeks after 22 October, as ordered, over Radio Hamburg and Radio Langenberg, that is, Cologne. The Defendant Bormann's last place of residence was in Berlin. The notice was, therefore, published in four Berlin papers: The *Tägliche Rundschau,* the *Berliner Zeitung, Der Berliner,* and the *Allgemeine Zeitung* for the 4 weeks which the Tribunal had ordered.

In my respectful submission, the Charter and Rules of Procedure have been complied with. The Tribunal, therefore, has the right to take proceedings *in absentia* under Article 12. It is, of course, a matter for the Tribunal to decide whether it will exercise that right.

The Chief Prosecutors submit, however, that there is no change in the position since they indicted Bormann and that, unless the Tribunal has any different view, this is a proper case for trial *in absentia.*

I am authorized to make this statement not only on behalf of the British Delegation, but on behalf of the United States and the French Republic. I consulted my friend and colleague, Colonel Pokrovsky, yesterday and he had to take instructions on the matter, and I notice he is here today. I haven't had the opportunity of speaking to him this morning and no doubt he will be able to tell the Tribunal any thing if he so desires.

I hope that that explains the basis of the matter to the Tribunal. If there are any other facts, I should be only too happy to answer any point.

THE PRESIDENT: It is suggested to me that you should file with the General Secretary proof of the publication to which you have referred.

SIR DAVID MAXWELL-FYFE: With proof of the publication! If it please My Lord, that will be done.

THE PRESIDENT: Thank you, Sir David. Then I will ask the Chief Prosecutor for the Soviet Union if he wishes to address the Tribunal.

COL. POKROVSKY: I thank the Tribunal for their wish to hear the opinion of the Soviet Delegation. I shall avail myself

of the privilege granted by the Tribunal to express the complete concurrence of the Soviet Delegation, and to inform you of the attitude adopted by my colleagues where Bormann is concerned. We consider that the Tribunal has every justification, under Article 12 of the Charter, to accept in evidence all the material relative to Bormann's case and to start proceedings against him in his absence.

THE PRESIDENT: The Tribunal will adjourn for a short time and hopes it will be able to give its decision shortly.

[A recess was taken.]

THE PRESIDENT: The Tribunal has decided that in pursuance of Article 12 of the Charter, it will try the Defendant Bormann in his absence, and it announces that Counsel will be appointed to defend the Defendant Bormann.

The Tribunal will now adjourn.

[The Tribunal adjourned until 1500 hours.]

THE PRESIDENT: The motion to amend the indictment by adding the name of Alfried Krupp has been considered by the Tribunal in all its aspects and the application is rejected.

The Tribunal will now adjourn.

[The Tribunal adjourned until 20 November 1945 at 1000 hours.]

FIRST DAY

Tuesday, 20 November 1945

Morning Session

THE PRESIDENT: Before the defendants in this case are called upon to make their pleas to the Indictment which has been lodged against them, and in which they are charged with Crimes against Peace, War Crimes, and Crimes against Humanity, and with a Common Plan or Conspiracy to commit those crimes, it is the wish of the Tribunal that I should make a very brief statement on behalf of the Tribunal.

This International Military Tribunal has been established pursuant to the Agreement of London, dated the 8th of August 1945, and the Charter of the Tribunal as annexed thereto, and the purpose for which the Tribunal has been established is stated in Article 1 of the Charter to be the just and prompt trial and punishment of the major war criminals of the European Axis.

The Signatories to the Agreement and Charter are the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic, and the Government of the Union of Soviet Socialist Republics.

The Committee of the Chief Prosecutors, appointed by the four Signatories, have settled the final designation of the war criminals to be tried by the Tribunal, and have approved the Indictment on which the present defendants stand charged here today.

On Thursday, the 18th of October 1945, in Berlin, the Indictment was lodged with the Tribunal and a copy of that Indictment in the German language has been furnished to each defendant, and has been in his possession for more than 30 days.

All the defendants are represented by counsel. In almost all cases the counsel appearing for the defendants have been chosen by the defendants themselves, but in cases where counsel could not be obtained the Tribunal has itself selected suitable counsel agreeable to the defendant.

The Tribunal has heard with great satisfaction of the steps which have been taken by the Chief Prosecutors to make available to defending counsel the numerous documents upon which the Prosecution rely, with the aim of giving to the defendants every possibility for a just defense.

The Trial which is now about to begin is unique in the history of the jurisprudence of the world and it is of supreme importance to millions of people all over the globe. For these reasons, there is laid upon everybody who takes any part in this Trial a solemn responsibility to discharge their duties without fear or favor, in accordance with the sacred principles of law and justice.

The four Signatories having invoked the judicial process, it is the duty of all concerned to see that the Trial in no way departs from those principles and traditions which alone give justice its authority and the place it ought to occupy in the affairs of all civilized states.

This Trial is a public Trial in the fullest sense of those words, and I must, therefore, remind the public that the Tribunal will insist upon the complete maintenance of order and decorum, and will take the strictest measures to enforce it. It only remains for me to direct, in accordance with the provisions of the Charter, that the Indictment shall now be read.

MR. SIDNEY S. ALDERMAN (Associate Trial Counsel for the United States): May it please the Tribunal:

I. The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics by the undersigned, Robert H. Jackson, François de Menthon, Hartley Shawcross, and R. A. Rudenko, duly appointed to represent their respective governments in the investigation of the charges against and the prosecution of the major war criminals, pursuant to the Agreement of London dated 8 August 1945, and the Charter of this Tribunal annexed thereto, hereby accuse as guilty, in the respects hereinafter set forth, of Crimes against Peace, War Crimes, and Crimes against Humanity, and of a Common Plan or Conspiracy to commit those Crimes, all as defined in the Charter of the Tribunal, and accordingly name as defendants in this cause and as indicted on the Counts hereinafter set out:

Hermann Wilhelm Göring, Rudolf Hess, Joachim von Ribbentrop, Robert Ley, Wilhelm Keitel, Ernst Kaltenbrunner, Alfred Rosenberg, Hans Frank, Wilhelm Frick, Julius Streicher, Walter Funk, Hjalmar Schacht, Gustav Krupp von Bohlen und Halbach, Karl Dönitz, Erich Raeder, Baldur von Schirach, Fritz Sauckel, Alfred Jodl, Martin Bormann, Franz von Papen, Arthur Seyss-Inquart, Albert Speer, Constantin von Neurath and Hans Fritzsche, individually and as members of any of the groups or organizations next hereinafter named.

II. The following are named as groups or organizations (since dissolved) which should be declared criminal by reason of their aims and the means used for the accomplishment thereof, and in

connection with the conviction of such of the named defendants as were members thereof:

Die Reichsregierung (Reich Cabinet); das Korps der Politischen Leiter der Nationalsozialistischen Deutschen Arbeiterpartei (Leadership Corps of the Nazi Party); die Schutzstaffeln der Nationalsozialistischen Arbeiterpartei (commonly known as the "SS") and including the Sicherheitsdienst (commonly known as the "SD"); die Geheime Staatspolizei (Secret State Police, commonly known as the "Gestapo"); die Sturmabteilungen der NSDAP (commonly known as the "SA"); and the General Staff and the High Command of the German Armed Forces. The identity and membership of the groups or organizations referred to in the foregoing titles are hereinafter in Appendix B more particularly defined.

COUNT ONE—THE COMMON PLAN OR CONSPIRACY. Reference: the Charter, Article 6, especially Article 6 (a).

III. *Statement of the Offense.*

All the defendants, with divers other persons, during a period of years preceding 8 May 1945, participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a Common Plan or Conspiracy to commit, or which involved the commission of, Crimes against Peace, War Crimes, and Crimes against Humanity, as defined in the Charter of this Tribunal, and, in accordance with the provisions of the Charter, are individually responsible for their own acts and for all acts committed by any persons in the execution of such plan and conspiracy. The Common Plan or Conspiracy embraced the commission of Crimes against Peace, in that the defendants planned, prepared, initiated, and waged wars of aggression, which were also wars in violation of international treaties, agreements, or assurances. In the development and course of the Common Plan or Conspiracy it came to embrace the commission of War Crimes, in that it contemplated, and the defendants determined upon and carried out, ruthless wars against countries and populations, in violation of the rules and customs of war, including as typical and systematic means by which the wars were prosecuted, murder, ill-treatment, deportation for slave labor and for other purposes of civilian populations of occupied territories, murder and ill-treatment of prisoners of war and of persons on the High Seas, the taking and killing of hostages, the plunder of public and private property, the wanton destruction of cities, towns, and villages, and devastation not justified by military necessity. The Common Plan or Conspiracy contemplated and came to embrace as typical and systematic means, and the defendants determined upon and committed, Crimes against Humanity, both within Germany and within occupied territories, including murder, extermination, enslavement, deportation, and other inhumane acts committed

against civilian populations before and during the war, and persecutions on political, racial, or religious grounds, in execution of the plan for preparing and prosecuting aggressive or illegal wars, many of such acts and persecutions being violations of the domestic laws of the countries where perpetrated.

IV. *Particulars of the Nature and Development of the Common Plan or Conspiracy.*

(A) The Nazi Party as the central core of the Common Plan or Conspiracy.

In 1921 Adolf Hitler became the supreme leader or Führer of the Nationalsozialistische Deutsche Arbeiterpartei (National Socialist German Workers Party), also known as the Nazi Party, which had been founded in Germany in 1920. He continued as such throughout the period covered by this Indictment. The Nazi Party, together with certain of its subsidiary organizations, became the instrument of cohesion among the defendants and their co-conspirators and an instrument for the carrying out of the aims and purposes of their conspiracy. Each defendant became a member of the Nazi Party and of the conspiracy, with knowledge of their aims and purposes, or, with such knowledge, became an accessory to their aims and purposes at some stage of the development of the conspiracy.

(B) Common objectives and methods of conspiracy.

The aims and purposes of the Nazi Party and of the defendants and divers other persons from time to time associated as leaders, members, supporters, or adherents of the Nazi Party (hereinafter called collectively the "Nazi conspirators") were, or came to be, to accomplish the following by any means deemed opportune, including unlawful means, and contemplating ultimate resort to threat of force, force, and aggressive war: (1) to abrogate and overthrow the Treaty of Versailles and its restrictions upon the military armament and activity of Germany; (2) to acquire the territories lost by Germany as the result of the World War of 1914-18 and other territories in Europe asserted by the Nazi conspirators to be occupied principally by so-called "racial Germans"; (3) to acquire still further territories in continental Europe and elsewhere claimed by the Nazi conspirators to be required by the "racial Germans" as "Lebensraum," or living space, all at the expense of neighboring and other countries. The aims and purposes of the Nazi conspirators were not fixed or static, but evolved and expanded as they acquired progressively greater power and became able to make more effective application of threats of force and threats of aggressive war. When their expanding aims and purposes became finally so great as to provoke such strength of resistance as could be overthrown only by armed force and aggressive war, and not simply by the

opportunistic methods theretofore used, such as fraud, deceit, threats, intimidation, fifth-column activities, and propaganda, the Nazi conspirators deliberately planned, determined upon and launched their aggressive wars and wars in violation of international treaties, agreements, and assurances by the phases and steps hereinafter more particularly described.

(C) Doctrinal techniques of the Common Plan or Conspiracy.

To incite others to join in the Common Plan or Conspiracy, and as a means of securing for the Nazi conspirators their highest degree of control over the German community, they put forth, disseminated, and exploited certain doctrines, among others, as follows:

1. That persons of so-called "German blood" (as specified by the Nazi conspirators) were a "master race" and were accordingly entitled to subjugate, dominate, or exterminate other "races" and peoples;

2. That the German people should be ruled under the Führerprinzip (Leadership Principle) according to which power was to reside in a Führer from whom sub-leaders were to derive authority in a hierarchical order, each sub-leader to owe unconditional obedience to his immediate superior but to be absolute in his own sphere of jurisdiction; and the power of the leadership was to be unlimited, extending to all phases of public and private life;

3. That war was a noble and necessary activity of Germans;

4. That the leadership of the Nazi Party, as the sole bearer of the foregoing and other doctrines of the Nazi Party, was entitled to shape the structure, policies, and practices of the German State and all related institutions, to direct and supervise the activities of all individuals within the State, and to destroy all opponents.

(D) The acquiring of totalitarian control of Germany: political.

1. First steps in acquisition of control of State machinery:

In order to accomplish their aims and purposes, the Nazi conspirators prepared to seize totalitarian control over Germany to assure that no effective resistance against them could arise within Germany itself. After the failure of the Munich Putsch of 1923 aimed at the overthrow of the Weimar Republic by direct action, the Nazi conspirators set out through the Nazi Party to undermine and capture the German Government by "legal" forms supported by terrorism. They created and utilized, as a Party formation, Die Sturmabteilungen (SA), a semi-military, voluntary organization of young men trained for and committed to the use of violence, whose mission was to make the Party the master of the streets.

2. Control acquired:

On 30 January 1933 Hitler became Chancellor of the German Republic. After the Reichstag fire of 28 February 1933, clauses of the Weimar constitution guaranteeing personal liberty, freedom of speech, of the press, of association, and assembly were suspended. The Nazi conspirators secured the passage by the Reichstag of a "Law for the Protection of the People and the Reich" giving Hitler and the members of his then cabinet plenary powers of legislation. The Nazi conspirators retained such powers after having changed the members of the cabinet. The conspirators caused all political parties except the Nazi Party to be prohibited. They caused the Nazi Party to be established as a para-governmental organization with extensive and extraordinary privileges.

3. Consolidation of control:

Thus possessed of the machinery of the German State, the Nazi conspirators set about the consolidation of their position of power within Germany, the extermination of potential internal resistance, and the placing of the German nation on a military footing.

(a) The Nazi conspirators reduced the Reichstag to a body of their own nominees and curtailed the freedom of popular elections throughout the country. They transformed the several states, provinces, and municipalities, which had formerly exercised semi-autonomous powers, into hardly more than administrative organs of the central Government. They united the offices of the President and the Chancellor in the person of Hitler, instituted a widespread purge of civil servants, and severely restricted the independence of the judiciary and rendered it subservient to Nazi ends. The conspirators greatly enlarged existing State and Party organizations, established a network of new State and Party organizations, and "co-ordinated" State agencies with the Nazi Party and its branches and affiliates, with the result that German life was dominated by Nazi doctrine and practice and progressively mobilized for the accomplishment of their aims.

(b) In order to make their rule secure from attack and to instill fear in the hearts of the German people, the Nazi conspirators established and extended a system of terror against opponents and supposed or suspected opponents of the regime. They imprisoned such persons without judicial process, holding them in "protective custody" and concentration camps, and subjected them to persecution, degradation, despoilment, enslavement, torture, and murder. These concentration camps were established early in 1933 under the direction of the Defendant Göring and expanded as a fixed part of the terroristic policy and method of the conspirators and used by them for the commission of the Crimes against

Humanity hereinafter alleged. Among the principal agencies utilized in the perpetration of these crimes were the SS and the Gestapo, which, together with other favored branches or agencies of the State and Party, were permitted to operate without restraint of law.

(c) The Nazi conspirators conceived that, in addition to the suppression of distinctively political opposition, it was necessary to suppress or exterminate certain other movements or groups which they regarded as obstacles to their retention of total control in Germany and to the aggressive aims of the conspiracy abroad. Accordingly:

(1) The Nazi conspirators destroyed the free trade unions in Germany by confiscating their funds and properties, persecuting their leaders, prohibiting their activities, and supplanting them by an affiliated Party organization. The Leadership Principle was introduced into industrial relations, the entrepreneur becoming the leader and the workers becoming his followers. Thus any potential resistance of the workers was frustrated and the productive labor capacity of the German nation was brought under the effective control of the conspirators.

(2) The Nazi conspirators, by promoting beliefs and practices incompatible with Christian teaching, sought to subvert the influence of the churches over the people and in particular over the youth of Germany. They avowed their aim to eliminate the Christian churches in Germany and sought to substitute therefore Nazi institutions and Nazi beliefs and pursued a program of persecution of priests, clergy, and members of monastic orders whom they deemed opposed to their purposes, and confiscated church property.

(3) The persecution by the Nazi conspirators of pacifist groups, including religious movements dedicated to pacifism, was particularly relentless and cruel.

(d) Implementing their "master race" policy, the conspirators joined in a program of relentless persecution of the Jews, designed to exterminate them. Annihilation of the Jews became an official State policy, carried out both by official action and by incitements to mob and individual violence. The conspirators openly avowed their purpose. For example, the Defendant Rosenberg stated: "Anti-Semitism is the unifying element of the reconstruction of Germany." On another occasion he also stated:

> "Germany will regard the Jewish question as solved only after the very last Jew has left the greater German living space . . . . Europe will have its Jewish question solved only after the very last Jew has left the continent."

The Defendant Ley declared:

"We swear we are not going to abandon the struggle until the last Jew in Europe has been exterminated and is actually dead. It is not enough to isolate the Jewish enemy of mankind—the Jew has got to be exterminated."

On another occasion he also declared:

"The second German secret weapon is anti-Semitism, because if it is consistently pursued by Germany, it will become a universal problem which all nations will be forced to consider."

The Defendant Streicher declared:

"The sun will not shine on the nations of the earth until the last Jew is dead."

These avowals and incitements were typical of the declarations of the Nazi conspirators throughout the course of their conspiracy. The program of action against the Jews included disfranchisement, stigmatization, denial of civil liberties, subjecting their persons and property to violence, deportation, enslavement, enforced labor, starvation, murder and mass extermination. The extent to which the conspirators succeeded in their purpose can only be estimated, but the annihilation was substantially complete in many localities of Europe. Of the 9,600,000 Jews who lived in the parts of Europe under Nazi domination, it is conservatively estimated that 5,700,000 have disappeared, most of them deliberately put to death by the Nazi conspirators. Only remnants of the Jewish population of Europe remain.

(e) In order to make the German people amenable to their will, and to prepare them psychologically for war, the Nazi conspirators reshaped the educational system and particularly the education and training of the German youth. The Leadership Principle was introduced into the schools, and the Party and affiliated organizations were given wide supervisory powers over education. The Nazi conspirators imposed a supervision of all cultural activities, controlled the dissemination of information and the expression of opinion within Germany as well as the movement of intelligence of all kinds from and into Germany, and created a vast propaganda machine.

(f) The Nazi conspirators placed a considerable number of their dominated organizations on a progressively militarized footing with a view to the rapid transformation and use of such organizations whenever necessary as instruments of war.

(E) The acquiring of totalitarian control in Germany: economic; and the economic planning and mobilization for aggressive war.

Having gained political power, the conspirators organized Germany's economy to give effect to their political aims.

1. In order to eliminate the possibility of resistance in the economic sphere, they deprived labor of its rights of free industrial and political association as particularized in paragraph (D) 3 (c) (1) herein.

2. They used organizations of German business as instruments of economic mobilization for war.

3. They directed Germany's economy towards preparation and equipment of the military machine. To this end they directed finance, capital investment, and foreign trade.

4. The Nazi conspirators, and in particular the industrialists among them, embarked upon a huge re-armament program and set out to produce and develop huge quantities of materials of war and to create a powerful military potential.

5. With the object of carrying through the preparation for war the Nazi conspirators set up a series of administrative agencies and authorities. For example, in 1936 they established for this purpose the office of the Four Year Plan with the Defendant Göring as Plenipotentiary, vesting it with overriding control over Germany's economy. Furthermore, on 28 August 1939, immediately before launching their aggression against Poland, they appointed the Defendant Funk Plenipotentiary for Economics; and on 30 August 1939 they set up the Ministerial Council for the Defense of the Reich to act as a War Cabinet.

(F) Utilization of Nazi control for foreign aggression.

1. Status of the conspiracy by the middle of 1933 and projected plans.

By the middle of the year 1933 the Nazi conspirators, having acquired governmental control over Germany, were in a position to enter upon further and more detailed planning with particular relationship to foreign policy. Their plan was to re-arm and to reoccupy and fortify the Rhineland, in violation of the Treaty of Versailles and other treaties, in order to acquire military strength and political bargaining power to be used against other nations.

2. The Nazi conspirators decided that for their purpose the Treaty of Versailles must definitely be abrogated and specific plans were made by them and put into operation by 7 March 1936, all of which opened the way for the major aggressive steps to follow, as hereinafter set forth. In the execution of this phase of the conspiracy the Nazi conspirators did the following acts:

(a) They led Germany to enter upon a course of secret rearmament from 1933 to March 1935, including the training of military

personnel and the production of munitions of war, and the building of an air force.

(b) On 14 October 1933 they led Germany to leave the International Disarmament Conference and the League of Nations.

(c) On 10 March 1935 the Defendant Göring announced that Germany was building a military air force.

(d) On 16 March 1935 the Nazi conspirators promulgated a law for universal military service, in which they stated the peace time strength of the German Army would be fixed at 500,000 men.

(e) On 21 May 1935 they falsely announced to the world, with intent to deceive and allay fears of aggressive intentions, that they would respect the territorial limitations of the Versailles Treaty and comply with the Locarno Pacts.

(f) On 7 March 1936 they reoccupied and fortified the Rhineland, in violation of the Treaty of Versailles and the Rhine Pact of Locarno of 16 October 1925, and falsely announced to the world that "we have no territorial demands to make in Europe."

3. Aggressive action against Austria and Czechoslovakia.

(a) The 1936-38 phase of the plan: planning for the assault on Austria and Czechoslovakia.

The Nazi conspirators next entered upon the specific planning for the acquisition of Austria and Czechoslovakia, realizing it would be necessary, for military reasons, first to seize Austria before assaulting Czechoslovakia. On 21 May 1935 in a speech to the Reichstag, Hitler stated that:

> "Germany neither intends, nor wishes to interfere in the internal affairs of Austria, to annex Austria or to conclude an Anschluss."

On 1 May 1936, within 2 months after the re-occupation of the Rhineland, Hitler stated:

> "The lie goes forth again that Germany tomorrow or the day after will fall upon Austria or Czechoslovakia."

Thereafter, the Nazi conspirators caused a treaty to be entered into between Austria and Germany on 11 July 1936, Article I of which stated that:

> "The German Government recognizes the full sovereignty of the Federated State of Austria in the spirit of the pronouncements of the German Führer and Chancellor of 21 May 1935."

Meanwhile, plans for aggression in violation of that treaty were being made. By the autumn of 1937 all noteworthy opposition within the Reich had been crushed. Military preparation for the Austrian action was virtually concluded. An influential group of the Nazi conspirators met with Hitler on

5 November 1937, to review the situation. It was reaffirmed that Nazi Germany must have "Lebensraum" in Central Europe. It was recognized that such conquest would probably meet resistance which would have to be crushed by force and that their decision might lead to a general war, but this prospect was discounted as a risk worth taking. There emerged from this meeting three possible plans for the conquest of Austria and Czechoslovakia. Which of the three was to be used was to depend upon the developments in the political and military situation in Europe. It was contemplated during this meeting that the conquest of Austria and Czechoslovakia would, through compulsory emigration of 2 million persons from Czechoslovakia and 1 million persons from Austria, provide additional food to the Reich for 5 million to 6 million people, strengthen it militarily by providing shorter and better frontiers, and make possible the constituting of new armies up to about twelve divisions. Thus, the aim of the plan against Austria and Czechoslovakia was conceived of not as an end in itself but as a preparatory measure toward the next aggressive steps in the Nazi conspiracy.

(b) The execution of the plan to invade Austria: November 1937 to March 1938.

Hitler, on 8 February 1938, called Chancellor Schuschnigg to a conference at Berchtesgaden. At the meeting of 12 February 1938, under threat of invasion, Schuschnigg yielded a promise of amnesty to imprisoned Nazis and appointment of Nazis to ministerial posts —meaning in Austria. He agreed to remain silent until Hitler's next speech in which Austria's independence was to be re-affirmed, but Hitler in that speech, instead of affirming Austrian independence, declared himself protector of all Germans. Meanwhile, subversive activities of Nazis in Austria increased. Schuschnigg, on 9 March 1938, announced a plebiscite for the following Sunday on the question of Austrian independence. On 11 March Hitler sent an ultimatum, demanding that the plebiscite be called off or that Germany would invade Austria. Later the same day a second ultimatum threatened invasion unless Schuschnigg should resign in 3 hours. Schuschnigg resigned. The Defendant Seyss-Inquart, who was appointed Chancellor, immediately invited Hitler to send German troops into Austria to "preserve order." The invasion began on 12 March 1938. On 13 March Hitler by proclamation assumed office as Chief of State of Austria and took command of its armed forces. By a law of the same date Austria was annexed to Germany.

(c) The execution of the plan to invade Czechoslovakia: April 1938 to March 1939.

(1) Simultaneously with their annexation of Austria, the Nazi conspirators gave false assurances to the Czechoslovak Government

that they would not attack that country. But within a month they met to plan specific ways and means of attacking Czechoslovakia, and to revise, in the light of the acquisition of Austria, the previous plans for aggression against Czechoslovakia.

(2) On 21 April 1938 the Nazi conspirators met and prepared to launch an attack on Czechoslovakia not later than 1 October 1938. They planned to create an "incident" to "justify" the attack. They decided to launch a military attack only after a period of diplomatic squabbling which, growing more serious, would lead to an excuse for war, or, in the alternative, to unleash a lightning attack as a result of an "incident" of their own creation. Consideration was given to assassinating the German Ambassador at Prague to create the requisite incident. From and after 21 April 1938, the Nazi conspirators caused to be prepared detailed and precise military plans designed to carry out such an attack at any opportune moment and calculated to overthrow all Czech resistance within 4 days, thus presenting the world with a *fait accompli,* and so forestalling outside resistance. Throughout the months of May, June, July, August, and September, these plans were made more specific and detailed, and by 3 September 1938 it was decided that all troops were to be ready for action on 28 September 1938.

(3) Throughout this same period, the Nazi conspirators were agitating the minorities question in Czechoslovakia, and particularly in the Sudetenland, leading to a diplomatic crisis in August and September 1938. After the Nazi conspirators threatened war, the United Kingdom and France concluded a pact with Germany and Italy at Munich on 29 September 1938, involving the cession of the Sudetenland by Czechoslovakia to Germany. Czechoslovakia was required to acquiesce. On 1 October 1938 German troops occupied the Sudetenland.

(4) On 15 March 1939, contrary to the provisions of the Munich Pact itself, the Nazi conspirators caused the completion of their plan by seizing and occupying the major part of Czechoslovakia, i.e. Bohemia and Moravia, not ceded to Germany by the Munich Pact.

4. Formulation of the plan to attack Poland: preparation and initiation of aggressive war: March 1939 to September 1939.

(a) With these aggressions successfully consummated, the conspirators had obtained much desired resources and bases and were ready to undertake further aggressions by means of war. Following the assurances to the world of peaceful intentions, an influential group of the conspirators met on 23 May 1939 to consider the further implementation of their plan. The situation was reviewed, and it was observed that "the past six years have been put to good use and all measures have been taken in correct sequence and in

accordance with our aims," that the national-political unity of the Germans had been substantially achieved, and that further successes could not be achieved without war and bloodshed. It was decided nevertheless next to attack Poland at the first suitable opportunity. It was admitted that the questions concerning Danzig which they had agitated with Poland were not true questions, but rather that the question was one of aggressive expansion for food and "Lebensraum." It was recognized that Poland would fight if attacked and that a repetition of the Nazi success against Czechoslovakia without war could not be expected. Accordingly, it was determined that the problem was to isolate Poland and, if possible, prevent a simultaneous conflict with the Western Powers. Nevertheless, it was agreed that England was an enemy to their aspirations, and that war with England and her ally France must eventually result, and therefore that in that war every attempt must be made to overwhelm England with a "Blitzkrieg", or lightning war. It was thereupon determined immediately to prepare detailed plans for an attack on Poland at the first suitable opportunity and thereafter for an attack on England and France, together with plans for the simultaneous occupation by armed force of air bases in the Netherlands and Belgium.

(b) Accordingly, after having denounced the German-Polish Pact of 1934 on false grounds, the Nazi conspirators proceeded to stir up the Danzig issue, to prepare frontier "incidents" to "justify" the attack, and to make demands for the cession of Polish territory. Upon refusal by Poland to yield, they caused German Armed Forces to invade Poland on 1 September 1939, thus precipitating war also with the United Kingdom and France.

5. Expansion of the war into a general war of aggression: planning and execution of attacks on Denmark, Norway, Belgium, the Netherlands, Luxembourg, Yugoslavia, and Greece: 1939 to April 1941.

Thus the aggressive war prepared for by the Nazi conspirators through their attacks on Austria and Czechoslovakia was actively launched by their attack on Poland, in violation of the terms of the Briand-Kellogg Pact, 1928. After the total defeat of Poland, in order to facilitate the carrying out of their military operations against France and the United Kingdom, the Nazi conspirators made active preparations for an extension of the war in Europe. In accordance with these plans, they caused the German Armed Forces to invade Denmark and Norway on 9 April 1940; Belgium, the Netherlands, and Luxembourg on 10 May 1940; Yugoslavia and Greece on 6 April 1941. All these invasions had been specifically planned in advance.

6. German invasion on 22 June 1941 of the U.S.S.R. territory in violation of the Non-Aggression Pact of 23 August 1939.

On 22 June 1941 the Nazi conspirators deceitfully denounced the Non-Aggression Pact between Germany and the U.S.S.R. and without any declaration of war invaded Soviet territory, thereby beginning a war of aggression against the U.S.S.R.

From the first day of launching their attack on Soviet territory the Nazi conspirators, in accordance with their detailed plans, began to carry out the destruction of cities, towns, and villages, the demolition of factories, collective farms, electric stations, and railroads, the robbery and barbaric devastation of the natural cultural institutions of the peoples of the U.S.S.R., the devastation of museums, churches, historic monuments, the mass deportation of the Soviet citizens for slave labor to Germany, as well as the annihilation of old people, women, and children, especially Belorussians and Ukrainians. The extermination of Jews was committed throughout the territory of the Soviet Union.

The above-mentioned criminal offenses were perpetrated by the German troops in accordance with the orders of the Nazi Government and the General Staff and High Command of the German Armed Forces.

7. Collaboration with Italy and Japan and aggressive war against the United States: November 1936 to December 1941.

After the initiation of the Nazi wars of aggression the Nazi conspirators brought about a German-Italian-Japanese 10-year military-economic alliance signed at Berlin on 27 September 1940. This agreement, representing a strengthening of the bonds among those three nations established by the earlier but more limited pact of 25 November 1936, stated: "The Governments of Germany, Italy, and Japan, considering it as a condition precedent of any lasting peace that all nations of the world be given each its own proper place, have decided to stand by and co-operate with one another in regard of their efforts in Greater East Asia and regions of Europe respectively wherein it is their prime purpose to establish and maintain a new order of things calculated to promote the mutual prosperity and welfare of the peoples concerned." The Nazi conspirators conceived that Japanese aggression would weaken and handicap those nations with which they were at war, and those with whom they contemplated war. Accordingly, the Nazi conspirators exhorted Japan to seek "a new order of things." Taking advantage of the wars of aggression then being waged by the Nazi conspirators, Japan commenced an attack on 7 December 1941 against the United States of America at Pearl Harbor and the Philippines, and against the British Commonwealth of Nations, French Indo-China, and the Netherlands in the Southwest Pacific. Germany declared war against the United States on 11 December 1941.

(G) War Crimes and Crimes against Humanity committed in the course of executing the conspiracy for which the conspirators are responsible.

1. Beginning with the initiation of the aggressive war on 1 September 1939, and throughout its extension into wars involving almost the entire world, the Nazi conspirators carried out their Common Plan or Conspiracy to wage war in ruthless and complete disregard and violation of the laws and customs of war. In the course of executing the Common Plan or Conspiracy, there were committed the War Crimes detailed hereinafter in Count Three of this Indictment.

2. Beginning with the initiation of their plan to seize and retain total control of the German State, and thereafter throughout their utilization of that control for foreign aggression, the Nazi conspirators carried out their Common Plan or Conspiracy in ruthless and complete disregard and violation of the laws of humanity. In the course of executing the Common Plan or Conspiracy there were committed the Crimes against Humanity detailed hereinafter in Count Four of this Indictment.

3. By reason of all the foregoing, the defendants with divers other persons are guilty of a Common Plan or Conspiracy for the accomplishment of Crimes against Peace; of a conspiracy to commit Crimes against Humanity in the course of preparation for war and in the course of prosecution of war, and of a conspiracy to commit War Crimes not only against the armed forces of their enemies but also against non-belligerent civilian populations.

(H) Individual, group and organization responsibility for the offense stated in Count One.

Reference is hereby made to Appendix A of this Indictment for a statement of the responsibility of the individual defendants for the offense set forth in this Count One of the Indictment. Reference is hereby made to Appendix B of this Indictment for a statement of the responsibility of the groups and organizations named herein as criminal groups and organizations for the offenses set forth in this Count One of the Indictment.

If the Tribunal please, that ends Count One, which is America's responsibility. Great Britain will present Count Two.

SIR DAVID MAXWELL-FYFE: If your Lordships please:

COUNT TWO — CRIMES AGAINST PEACE. Charter, Article 6 (a).

V. *Statement of the Offense.*

All the defendants with divers other persons, during a period of years preceding 8 May 1945, participated in the planning, prep-

aration, initiation, and waging of wars of aggression, which were also wars in violation of international treaties, agreements, and assurances.

VI. *Particulars of the Wars Planned, Prepared, Initiated, and Waged.*

(A) The wars referred to in the statement of offense in this Count Two of the Indictment and the dates of their initiation were the following: against Poland, 1 September 1939; against the United Kingdom and France, 3 September 1939; against Denmark and Norway, 9 April 1940; against Belgium, the Netherlands, and Luxembourg, 10 May 1940; against Yugoslavia and Greece, 6 April 1941; against the U.S.S.R., 22 June 1941; and against the United States of America, 11 December 1941.

(B) Reference is hereby made to Count One of the Indictment for the allegations charging that these wars were wars of aggression on the part of the defendants.

(C) Reference is hereby made to Appendix C annexed to this Indictment for a statement of particulars of the charges of violations of international treaties, agreements, and assurances caused by the defendants in the course of planning, preparing, and initiating these wars.

VII. *Individual, Group and Organization Responsibility for the Offense Stated in Count Two.*

Reference is hereby made to Appendix A of this Indictment for a statement of the responsibility of the individual defendants for the offense set forth in this Count Two of the Indictment. Reference is hereby made to Appendix B of this Indictment for a statement of the responsibility of the groups and organizations named herein as criminal groups and organizations for the offense set forth in this Count Two of the Indictment.

That finishes, Mr. President, Count Two of the Indictment.

THE PRESIDENT: The Tribunal will now adjourn for 15 minutes.

SIR DAVID MAXWELL-FYFE: If your Lordship pleases, the reading will be resumed by a representative of the French Republic.

[A recess was taken.]

THE PRESIDENT: The Tribunal understands that the Defendant Ernst Kaltenbrunner is temporarily ill. The Trial will continue in his absence. I call upon the Chief Prosecutor for the Provisional Government of the French Republic.

M. PIERRE MOUNIER (Assistant Prosecutor for the French Republic): COUNT THREE—WAR CRIMES. Charter, Article 6, especially 6 (b).

VIII. *Statement of the Offense.*

All the defendants committed War Crimes between 1 September 1939 and 8 May 1945, in Germany and in all those countries and territories occupied by the German Armed Forces since 1 September 1939, and in Austria, Czechoslovakia, and Italy, and on the High Seas.

All the defendants, acting in concert with others, formulated and executed a Common Plan or Conspiracy to commit War Crimes as defined in Article 6 (b) of the Charter. This plan involved, among other things, the practice of "total war" including methods of combat and of military occupation in direct conflict with the laws and customs of war, and the perpetration of crimes committed on the field of battle during encounters with enemy armies, against prisoners of war, and in occupied territories against the civilian population of such territories.

The said War Crimes were committed by the defendants and by other persons for whose acts the defendants are responsible (under Article 6 of the Charter) as such other persons when committing the said War Crimes performed their acts in execution of a Common Plan and Conspiracy to commit the said War Crimes, in the formulation and execution of which plan and conspiracy all the defendants participated as leaders, organizers, instigators, and accomplices.

These methods and crimes constituted violations of international conventions, of internal penal laws, and of the general principles of criminal law as derived from the criminal law of all civilized nations, and were involved in and part of a systematic course of conduct.

(A) Murder and ill-treatment of civilian populations of or in occupied territory and on the High Seas.

Throughout the period of their occupation of territories overrun by their armed forces, the defendants, for the purpose of systematically terrorizing the inhabitants, ill-treated civilians, imprisoned them without legal process, tortured, and murdered them.

The murders and ill-treatment were carried out by divers means, such as shooting, hanging, gassing, starvation, gross overcrowding, systematic undernutrition, systematic imposition of labor tasks beyond the strength of those ordered to carry them out, inadequate provision of surgical and medical services, kickings, beatings, brutality and torture of all kinds, including the use of hot irons and pulling out of fingernails and the performance of experiments by means of operations and otherwise on living human subjects. In some occupied territories the defendants interfered with religious services, persecuted members of the clergy and monastic orders, and expropriated church property. They conducted deliberate and

systematic genocide; viz., the extermination of racial and national groups, against the civilian population of certain occupied territories in order to destroy particular races and classes of people, and national, racial, or religious groups, particularly Jews, Poles, and Gypsies.

Civilians were systematically subjected to tortures of all kinds, with the object of obtaining information.

Civilians of occupied countries were subjected systematically to "protective arrests", that is to say they were arrested and imprisoned without any trial and any of the ordinary protections of the law, and they were imprisoned under the most unhealthy and inhumane conditions.

In the concentration camps were many prisoners who were classified "Nacht und Nebel". These were entirely cut off from the world and were allowed neither to receive nor to send letters. They disappeared without trace and no announcement of their fate was ever made by the German authorities.

Such crimes and ill-treatment are contrary to international conventions, in particular to Article 46 of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and to Article 6 (b) of the Charter.

The following particulars and all the particulars appearing later in this Count are set out herein by way of example only, are not exclusive of other particular cases, and are stated without prejudice to the right of the Prosecution to adduce evidence of other cases of murder and ill-treatment of civilians.

1. In France, Belgium, Holland, Denmark, Norway, Luxembourg, Italy, and the Channel Islands, (hereinafter called the "Western Countries"), and in that part of Germany which lies west of a line drawn due north and south through the center of Berlin (hereinafter called "Western Germany").

Such murder and ill-treatment took place in concentration camps and similar establishments set up by the defendants, and particularly in the concentration camps set up at Belsen, Buchenwald, Dachau, Breendonck, Grini, Natzweiler, Ravensbrück, Vught, and Amersfoort, and in numerous cities, towns, and villages, including Oradour sur Glane, Trondheim, and Oslo.

Crimes committed in France or against French citizens took the following forms:

Arbitrary arrests were carried out under political or racial pretexts; they were either individual or collective; notably in Paris (round-up of the 18th Arrondissement by the Field Gendarmerie,

round-up of the Jewish population of the 11th Arrondissement in August 1941, round-up in July 1942); at Clermont-Ferrand (round-up of professors and students of the University of Strasbourg, which had been evacuated to Clermont-Ferrand, on 25 November 1943); at Lyons; at Marseilles (round-up of 40,000 persons in January 1943); at Grenoble (round-up of 24 December 1943); at Cluny (round-up on 24 December 1943); at Figeac (round-up in May 1944); at Saint Pol de Léon (round-up in July 1944); at Locminé (round-up on 3 July 1944); at Eysieux (round-up in May 1944); and at Meaux-Moussey (round-up in September 1944). These arrests were followed by brutal treatment and tortures carried out by the most diverse methods, such as immersion in icy water, asphyxiation, torture of the limbs, and the use of instruments of torture, such as the iron helmet and electric current, and practiced in all the prisons of France, notably in Paris, Lyons, Marseilles, Rennes, Metz, Clermont-Ferrand, Toulouse, Nice, Grenoble, Annecy, Arras, Béthune, Lille, Loos, Valenciennes, Nancy, Troyes, and Caen, and in the torture chambers fitted up at the Gestapo centers.

In the concentration camps, the health regime and the labor regime were such that the rate of mortality (alleged to be from natural causes) attained enormous proportions, for instance:

1. Out of a convoy of 250 French women deported from Compiègne to Auschwitz in January 1943, 180 had died of exhaustion at the end of 4 months.

2. 143 Frenchmen died of exhaustion between 23 March and 6 May 1943 in Block 8 at Dachau.

3. 1,797 Frenchmen died of exhaustion between 21 November 1943 and 15 March 1945 in the block at Dora.

4. 465 Frenchmen died of general debility in November 1944 at Dora.

5. 22,761 deportees died of exhaustion at Buchenwald between 1 January 1943 and 15 April 1945.

6. 11,560 detainees died of exhaustion at Dachau Camp (most of them in Block 30 reserved for the sick and the infirm) between 1 January and 15 April 1945.

7. 780 priests died of exhaustion at Mauthausen.

8. Out of 2,200 Frenchmen registered at Flossenburg Camp, 1,600 died from supposedly natural causes.

Methods used for the work of extermination in concentration camps were:

Bad treatment, pseudo-scientific experiments (sterilization of women at Auschwitz and at Ravensbrück, study of the evolution of cancer of the womb at Auschwitz, of typhus at Buchenwald, anatomical research at Natzweiler, heart injections at Buchenwald,

bone grafting and muscular excisions at Ravensbrück, *et cetera*), and by gas chambers, gas wagons, and crematory ovens. Of 228,000 French political and racial deportees in concentration camps, only 28,000 survived.

In France also systematic extermination was practised, notably at Asq on 1 April 1944, at Colpo on 22 July 1944, at Buzet sur Tarn on 6 July 1944 and on 17 August 1944, at Pluvignier on 8 July 1944, at Rennes on 8 June 1944, at Grenoble on 8 July 1944, at Saint Flour on 10 June 1944, at Ruisnes on 10 June 1944, at Nimes, at Tulle, and at Nice, where, in July 1944, the victims of torture were exposed to the population, and at Oradour sur Glane where the entire village population was shot or burned alive in the church.

The many charnel pits give proof of anonymous massacres. Most notable of these are the charnel pits of Paris (Cascade du Bois de Boulogne), Lyons, Saint Genis-Laval, Besançon, Petit Saint Bernard, Aulnat, Caen, Port Louis, Charleval, Fontainebleau, Bouconne, Gabaudet, Lhermitage Lorges, Morlaas, Bordelongue, Signe.

In the course of a premeditated campaign of terrorism, initiated in Denmark by the Germans in the latter part of 1943, 600 Danish subjects were murdered and, in addition, throughout the German occupation of Denmark large numbers of Danish subjects were subjected to torture and ill-treatment of all sorts. In addition, approximately five hundred Danish subjects were murdered, by torture and otherwise, in German prisons and concentration camps.

In Belgium, between 1940 and 1944, torture by various means, but identical in each place, was carried out at Brussels, Liége, Mons, Ghent, Namur, Antwerp, Tournai, Arlon, Charleroi, and Dinant.

At Vught, in Holland, when the camp was evacuated, about four hundred persons were shot.

In Luxembourg, during the German occupation, 500 persons were murdered and, in addition, another 521 were illegally executed, by order of such special tribunals as the so-called "Sondergericht". Many more persons in Luxembourg were subjected to torture and ill-treatment by the Gestapo. At least 4,000 Luxembourg nationals were imprisoned during the period of German occupation, and of these at least 400 were murdered.

Between March 1944 and April 1945, in Italy, at least 7,500 men, women, and children, ranging in years from infancy to extreme old age were murdered by the German soldiery at Civitella, in the Ardeatine Caves in Rome, and at other places.

(B) Deportation, for slave labor and for other purposes, of the civilian populations of and in occupied territories.

During the whole period of the occupation by Germany of both the Western and the Eastern Countries, it was the policy of the German Government and of the German High Command to deport able-bodied citizens from such occupied countries to Germany and to other occupied countries to force them to work on fortifications, in factories, and in other tasks connected with the German war effort.

In pursuance of such policy there were mass deportations from all the Western and Eastern Countries for such purposes during the whole period of the occupation.

These deportations were contrary to the international conventions, in particular to Article 46 of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and to Article 6 (b) of the Charter.

Particulars of deportations, by way of example only and without prejudice to the production of evidence of other cases, are as follows:

1. From the Western Countries:

From France the following "deportations" of persons for political and racial reasons took place—each of which consisted of from 1,500 to 2,500 deportees:

1940, 3 transports; 1941, 14 transports; 1942, 104 transports; 1943, 257 transports; 1944, 326 transports.

These deportees were subjected to the most barbarous conditions of overcrowding; they were provided with wholly insufficient clothing and were given little or no food for several days.

The conditions of transport were such that many deportees died in the course of the voyage, for example:

In one of the wagons of the train which left Compiègne for Buchenwald, on the 17th of September 1943, 80 men died out of 130.

On 4 June 1944, 484 bodies were taken out of a train at Sarrebourg.

In a train which left Compiègne on 2 July 1944 for Dachau, more than 600 dead were found on arrival, i.e. one-third of the total number.

In a train which left Compiègne on 16th of January 1944 for Buchenwald, more than 100 persons were confined in each wagon, the dead and the wounded being heaped in the last wagon during the voyage.

In April 1945, of 12,000 internees evacuated from Buchenwald 4,000 only were still alive when the marching column arrived near Regensburg.

During the German occupation of Denmark, 5,200 Danish subjects were deported to Germany and there imprisoned in concentration camps and other places.

In 1942 and thereafter, 6,000 nationals of Luxembourg were deported from their country under deplorable conditions and many of them perished.

From Belgium, between 1940 and 1944, at least 190,000 civilians were deported to Germany and used as slave labor. Such deportees were subjected to ill-treatment and many of them were compelled to work in armament factories.

From Holland, between 1940 and 1944, nearly half a million civilians were deported to Germany and to other occupied countries.

(C) Murder and ill-treatment of prisoners of war, and of other members of the armed forces of the countries with whom Germany was at war, and of persons on the High Seas.

The defendants ill-treated and murdered prisoners of war by denying them suitable food, shelter, clothing, and medical care and other attention; by forcing them to labor in inhumane conditions; by humiliating them, torturing them, and by killing them. The German Government and the German High Command imprisoned prisoners of war in various concentration camps, where they were killed or subjected to inhuman treatment by the various methods set forth in Paragraph VIII (A).

Members of the armed forces of the countries with whom Germany was at war were frequently murdered while in the act of surrendering.

These murders and ill-treatment were contrary to international conventions, particularly Articles 4, 5, 6, and 7 of the Hague Regulations, 1907, and to Articles 2, 3, 4, and 6 of the Prisoners of War Convention, Geneva, 1929, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and to Article 6 (b) of the Charter.

Particulars by way of example and without prejudice to the production of evidence of other cases, are as follows:

In the Western Countries:

French officers who escaped from Oflag X C were handed over to the Gestapo and disappeared; others were murdered by their guards; others sent to concentration camps and exterminated. Among others, the men of Stalag VI C were sent to Buchenwald.

Frequently prisoners captured on the Western Front were obliged to march to the camps until they completely collapsed. Some of them walked more than 600 kilometers with hardly any food; they

marched on for 48 hours running, without being fed; among them a certain number died of exhaustion or of hunger; stragglers were systematically murdered.

The same crimes were committed in 1943, 1944, and 1945, when the occupants of the camps were withdrawn before the Allied advance, particularly during the withdrawal of the prisoners from Sagan on February 8th, 1945.

Bodily punishments were inflicted upon non-commissioned officers and cadets who refused to work. On December 24th, 1943, three French non-commissioned officers were murdered for that motive in Stalag IV A. Much ill-treatment was inflicted without motive on other ranks; stabbing with bayonets, striking with rifle-butts, and whipping; in Stalag XX B the sick themselves were beaten many times by sentries; in Stalag III B and Stalag III C worn-out prisoners were murdered or grievously wounded. In military jails, in Graudenz for instance, in reprisal camps, as in Rava-Ruska, the food was so insufficient that the men lost more than 15 kilograms in a few weeks. In May 1942, one loaf of bread only was distributed in Rava-Ruska to each group of 35 men.

Orders were given to transfer French officers in chains to the camp of Mauthausen after they had tried to escape. At their arrival in camp they were murdered, either by shooting or by gas, and their bodies destroyed in the crematorium.

American prisoners, officers and men, were murdered in Normandy during the summer of 1944 and in the Ardennes in December 1944. American prisoners were starved, beaten, and mutilated in various ways in numerous Stalags in Germany or in the occupied countries, particularly in 1943, 1944, and 1945.

(D) Killing of hostages.

Throughout the territories occupied by the German Armed Forces in the course of waging their aggressive wars, the defendants adopted and put into effect on a wide scale the practice of taking and killing hostages from the civilian population. These acts were contrary to international conventions, particularly Article 50 of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and to Article 6 (b) of the Charter.

Particulars, by way of example and without prejudice to the production of evidence of other cases, are as follows:

In the Western Countries:

In France hostages were executed either individually or collectively; these executions took place in all the big cities of France, among others in Paris, Bordeaux, and Nantes, as well as at Chateaubriant.

In Holland many hundreds of hostages were shot at the following among other places: Rotterdam, Apeldoorn, Amsterdam, Benshop, and Haarlem.

In Belgium many hundreds of hostages were shot during the period 1940 to 1944.

M. CHARLES GERTHOFFER (Assistant Prosecutor for the French Republic) *[Continuing the reading of the Indictment]:*

(E) Plunder of public and private property.

The defendants ruthlessly exploited the people and the material resources of the countries they occupied, in order to strengthen the Nazi war machine, to depopulate and impoverish the rest of Europe, to enrich themselves and their adherents, and to promote German economic supremacy over Europe.

The defendants engaged in the following acts and practices, among others:

1. They degraded the standard of life of the people of occupied countries and caused starvation by stripping occupied countries of foodstuffs for removal to Germany.

2. They seized raw materials and industrial machinery in all of the occupied countries, removed them to Germany and used them in the interest of the German war effort and the German economy.

3. In all the occupied countries, in varying degrees, they confiscated businesses, plants, and other property.

4. In an attempt to give color of legality to illegal acquisitions of property, they forced owners of property to go through the forms of "voluntary" and "legal" transfers.

5. They established comprehensive controls over the economies of all of the occupied countries and directed their resources, their production, and their labor in the interests of the German war economy, depriving the local populations of the products of essential industries.

6. By a variety of financial mechanisms, they despoiled all of the occupied countries of essential commodities and accumulated wealth, debased the local currency systems and disrupted the local economies. They financed extensive purchases in occupied countries through clearing arrangements by which they exacted loans from the occupied countries. They imposed occupation levies, exacted financial contributions, and issued occupation currency, far in excess of occupation costs. They used these excess funds to finance the purchase of business properties and supplies in the occupied countries.

7. They abrogated the rights of the local populations in the occupied portions of the U.S.S.R. and in Poland and in other

countries to develop or manage agricultural and industrial properties, and reserved this area for exclusive settlement, development, and ownership by Germans and their so-called racial brethren.

8. In further development of their plan of criminal exploitation, they destroyed industrial cities, cultural monuments, scientific institutions, and property of all types in the occupied territories to eliminate the possibility of competition with Germany.

9. From their program of terror, slavery, spoliation, and organized outrage, the Nazi conspirators created an instrument for the personal profit and aggrandizement of themselves and their adherents. They secured for themselves and their adherents:

(a) Positions in administration of business involving power, influence, and lucrative prerequisites;

(b) The use of cheap forced labor;

(c) The acquisition on advantageous terms of foreign properties, raw materials, and business interests;

(d) The basis for the industrial supremacy of Germany.

These acts were contrary to international conventions, particularly Articles 46 to 56 inclusive of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and to Article 6 (b) of the Charter.

Particulars, by way of example and without prejudice to the production of evidence of other cases, are as follows:

1. Western Countries:

There was plundered from the Western Countries from 1940 to 1944, works of art, artistic objects, pictures, plastics, furniture, textiles, antique pieces, and similar articles of enormous value to the number of 21,903.

In France statistics show the following:

Removal of raw materials:

Coal, 63,000,000 tons; electric energy, 20,976 Mkwh; petrol and fuel, 1,943,750 tons; iron ore, 74,848,000 tons; siderurgical products, 3,822,000 tons; bauxite, 1,211,800 tons; cement, 5,984,000 tons; lime, 1,888,000 tons; quarry products 25,872,000 tons; and various other products to a total value of 79,961,423,000 francs.

Removal of industrial equipment: total—9,759,861,000 francs, of which 2,626,479,000 francs of machine tools.

Removal of agricultural produce: total—126,655,852,000 francs; i.e. for the principal products:

Wheat, 2,947,337 tons; oats, 2,354,080 tons; milk, 790,000 hectolitres, (concentrated and in powder, 460,000 hectolitres); butter, 76,000 tons; cheese, 49,000 tons; potatoes, 725,975 tons; various vege-

tables, 575,000 tons; wine, 7,647,000 hectolitres; champagne, 87,000,000 bottles; beer 3,821,520 hectolitres; various kinds of alcohol, 1,830,000 hectolitres.

Removal of manufactured products to a total of 184,640,0000,000 francs.

Plundering: Francs 257,020,024,000 from private enterprise, Francs 55,000,100,000 from the State.

Financial exploitation: From June 1940 to September 1944 the French Treasury was compelled to pay to Germany 631,866,000,000 francs.

Looting and destruction of works of art: The museums of Nantes, Nancy, Old-Marseilles were looted.

Private collections of great value were stolen. In this way, Raphaels, Vermeers, Van Dycks, and works of Rubens, Holbein, Rembrandt, Watteau, Boucher disappeared. Germany compelled France to deliver up "The Mystic Lamb" by Van Eyck, which Belgium had entrusted to her.

In Norway and other occupied countries decrees were made by which the property of many civilians, societies, *et cetera,* was confiscated. An immense amount of property of every kind was plundered from France, Belgium, Norway, Holland, and Luxembourg.

As a result of the economic plundering of Belgium between 1940 and 1944 the damage suffered amounted to 175 billions of Belgian francs.

(F) The exaction of collective penalties.

The Germans pursued a systematic policy of inflicting, in all the occupied countries, collective penalties, pecuniary and otherwise, upon the population for acts of individuals for which it could not be regarded as collectively responsible; this was done at many places, including Oslo, Stavanger, Trondheim, and Rogaland.

Similar instances occurred in France, among others in Dijon, Nantes, and as regards the Jewish population in the occupied territories. The total amount of fines imposed on French communities adds up to 1,157,179,484 francs made up as follows: A fine on the Jewish population, 1,000,000,000; various fines, 157,179,484.

These acts violated Article 50, Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and Article 6 (b) of the Charter.

(G) Wanton destruction of cities, towns, and villages, and devastation not justified by military necessity.

The defendants wantonly destroyed cities, towns, and villages, and committed other acts of devastation without military justifi-

cation or necessity. These acts violated Articles 46 and 50 of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and Article 6 (b) of the Charter.

Particulars, by way of example only and without prejudice to the production of evidence of other cases, are as follows:

1. Western Countries:

In March 1941 part of Lofoten in Norway was destroyed. In April 1942 the town of Telerag in Norway was destroyed.

Entire villages were destroyed in France, among others, Oradour sur Glane, Saint Nizier in Gascogne, La Mure, Vassieu, La Chappelle en Vercors. The town of Saint Dié was burnt down and destroyed. The Old Port District of Marseilles was dynamited in the beginning of 1943 and resorts along the Atlantic and the Mediterranean coasts, particularly the town of Sanary, were demolished.

In Holland there was most widespread and extensive destruction, not justified by military necessity, including the destruction of harbors, locks, dykes, and bridges; immense devastation was also caused by inundations which equally were not justified by military necessity.

(H) Conscription of civilian labor.

Throughout the occupied territories the defendants conscripted and forced the inhabitants to labor and requisitioned their services for purposes other than meeting the needs of the armies of occupation and to an extent far out of proportion to the resources of the countries involved. All the civilians so conscripted were forced to work for the German war effort. Civilians were required to register and many of those who registered were forced to join the Todt Organization and the Speer Legion, both of which were semi-military organizations involving some military training. These acts violated Articles 46 and 52 of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and Article 6 (b) of the Charter.

Particulars, by way of example only and without prejudice to the production of evidence of other cases, are as follows:

1. Western Countries:

In France, from 1942 to 1944, 963,813 persons were compelled to work in Germany and 737,000 to work in France for the German Army.

In Luxembourg, in 1944 alone, 2,500 men and 500 girls were conscripted for forced labor.

(I) Forcing civilians of occupied territories to swear allegiance to a hostile power.

Civilians who joined the Speer Legion, as set forth in Paragraph (H) were required, under threat of depriving them of food, money, and identity papers, to swear a solemn oath acknowledging unconditional obedience to Adolf Hitler, the Führer of Germany, which was to them a hostile power.

THE PRESIDENT: The Tribunal will now adjourn until 2 o'clock.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

THE PRESIDENT: Will the Chief Prosecutor for the French Republic continue the reading of the Indictment.

M. MOUNIER: In Lorraine, civil servants were obliged, in order to retain their positions, to sign a declaration by which they acknowledged the "return of their country to the Reich", pledged themselves to obey without reservation the orders of their chiefs and put themselves "at the active service of the Führer and of National Socialist greater Germany."

A similar pledge was imposed on Alsatian civil servants, by threat of deportation or internment.

These acts violated Article 45 of the Hague Regulations, 1907, the laws and customs of war, the general principles of international law, and Article 6 (b) of the Charter.

(J) Germanization of occupied territories.

In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavoured to assimilate those territories politically, culturally, socially, and economically into the German Reich. They endeavoured to obliterate the former national character of these territories. In pursuance of these plans, the defendants forcibly deported inhabitants who were predominantly non-German and replaced them by thousands of German colonists.

Their plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces.

This was carried out in most of the occupied countries especially in Norway, France (particularly in the Departments of Upper Rhine, Lower Rhine, Moselle, Ardennes, Aisne, Nord, Meurthe and Moselle), in Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.

In France in the Departments of Aisne, Nord, Meurthe and Moselle, and especially in that of the Ardennes, rural properties were confiscated by a German state organization which tried to work them under German management.

The landowners of these holdings were dispossessed and turned into agricultural laborers. In the Departments of Upper Rhine, Lower Rhine, and Moselle the methods of Germanization were those of annexation followed by conscription.

1. From the month of August 1940 officials who refused to take the oath of allegiance to the Reich were expelled. On September 21st the expulsion and deportation of population began, and on November 22d, 1940 more than 70,000 Lorrainers or Alsatians were

driven into the south zone of France. From July 31, 1941 onwards, more than 100,000 persons were deported into the eastern regions of the Reich or to Poland. All the property of the deportees or expelled persons was confiscated. At the same time, 80,000 Germans coming from the Saar or from Westphalia were installed in Lorraine and 2,000 farms belonging to French people were transferred to Germans.

2. From 2 January 1942 all the young people of the Departments of Upper Rhine and Lower Rhine, aged from 10 to 18 years, were incorporated in the Hitler Youth. The same measures were taken in the Moselle from 4 August 1942. From 1940 all the French schools were closed, their staffs expelled, and the German school system was introduced in the three departments.

3. On the 28th of September 1940 an order applicable to the Department of the Moselle ordained the Germanization of all the surnames and Christian names which were French in form. The same measure was taken on the 15th January 1943 in the Departments of Upper Rhine and Lower Rhine.

4. Two orders of the 23rd and 24th August 1942 imposed by force German nationality on French citizens.

5. On the 8th May 1941 for Upper Rhine and Lower Rhine, and on the 23rd April 1941 for the Moselle, orders were promulgated enforcing compulsory labor service on all French citizens of either sex aged from 17 to 25 years. From the 1st January 1942 for young men, and from the 26th January 1942 for young women, national labor service was effectively organized in the Moselle. This measure came into force on the 27th August 1942 in Upper Rhine and Lower Rhine, but for young men only. The classes of 1940, 1941, 1942 were called up.

6. These contingents were drafted into the Wehrmacht on the expiration of their time in the labor service.

On the 19th August 1942 an order instituted compulsory military service in the Moselle, and on the 25th August 1942 the contingents of 1940 to 1944 were called up in the three Departments.

Conscription was enforced by the German authorities in conformity with the provisions of German legislation. The first induction board took place on the 3rd September 1942. Later, in the Upper Rhine and Lower Rhine new levies were effected everywhere of the contingents from 1928 to 1939 inclusive. The French men who refused to obey these laws were considered as deserters and their families were deported, while their property was confiscated.

These acts violated Articles 43, 46, 55, and 56 of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all

civilized nations, the internal penal laws of the countries in which such crimes were committed, and Article 6 (b) of the Charter.

IX. *Individual, Group and Organization Responsibility for the Crimes Stated in Count Three.*

Reference is hereby made to Appendix A of this Indictment for a statement of the responsibility of the individual defendants for the charge set forth in Count Three of the Indictment.

Reference is hereby made to Appendix B of this Indictment for a statement of the responsibility of the groups and organizations named herein as criminal groups and organizations for the crime set forth in this part three of the Indictment.

THE PRESIDENT: I will now call upon the Chief Prosecutor for the Soviet Union.

LIEUTENANT COLONEL J. A. OZOL (Assistant Prosecutor for the U.S.S.R.): COUNT THREE—WAR CRIMES.

All the defendants committed War Crimes between 1 September 1939 and 8 May 1945 in Germany and in all those countries and territories occupied by the German Armed Forces since 1 September 1939, and in Austria, Czechoslovakia, Italy, and on the High Seas.

All the defendants, acting in concert with others, formulated and executed a Common Plan or Conspiracy to commit War Crimes as defined in Article 6 (b) of the Charter. This plan involved, among other things, the practice of "total war" including methods of combat and of military occupation in direct conflict with the laws and customs of war, and the commission of crimes perpetrated on the field of battle during encounters with enemy armies, and against prisoners of war, and in occupied territories against the civilian population of such territories.

The said War Crimes were committed by the defendants and by other persons for whose acts the defendants are responsible (under Article 6 of the Charter) as such other persons when committing the said War Crimes performed their acts in execution of a common plan and conspiracy to commit the said War Crimes, in the formulation and execution of which plan and conspiracy all the defendants participated as leaders, organizers, instigators, and accomplices.

These methods and crimes constituted violations of international conventions, of internal penal laws, and of the general principles of criminal law as derived from the criminal law of all civilized nations, and were involved in and part of a systematic course of conduct.

(A) Murder and ill-treatment of civilian populations of or in occupied territory and on the High Seas.

Throughout the period of their occupation of territories overrun by their armed forces the defendants, for the purpose of systematically terrorizing the inhabitants, murdered and tortured civilians, and ill-treated them, and imprisoned them without legal process.

The murders and ill-treatment were carried out by divers means, including shooting, hanging, gassing, starvation, gross overcrowding, systematic undernutrition, systematic imposition of labor tasks beyond the strength of those ordered to carry them out, inadequate provision of surgical and medical services, kickings, beatings, brutality, and torture of all kinds, including the use of hot irons and pulling out of fingernails and the performance of experiments by means of operations and otherwise on living human subjects. In some occupied territories the defendants interfered with religious services, persecuted members of the clergy and monastic orders, and expropriated church property. They conducted deliberate and systematic genocide, viz. the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people, and national, racial, or religious groups, particularly Jews, Poles, and Gypsies and others.

Civilians were systematically subjected to tortures of all kinds, with the object of obtaining information.

Civilians of occupied countries were subjected systematically to "protective arrests" whereby they were arrested and imprisoned without any trial and any of the ordinary protections of the law, and they were imprisoned under the most unhealthy and inhumane conditions.

In the concentration camps were many prisoners who were classified "Nacht und Nebel". These were entirely cut off from the world and were allowed neither to receive nor to send letters. They disappeared without trace and no announcement of their fate was ever made by the German authorities.

Such murders and ill-treatment were contrary to international conventions, in particular to Article 46 of the Hague Regulations, 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and to Article 6 (b) of the Charter.

The following particulars and all the particulars appearing later in this Count are set out herein by way of example only, are not exclusive of other particular cases, and are stated without prejudice to the right of the Prosecution to adduce evidence of other cases of murder and ill-treatment of civilians.

[2.] In the U.S.S.R., i.e. in the Bielorussian, Ukrainian, Estonian, Latvian, Lithuanian, Karelo-Finnish, and Moldavian Soviet

Socialist Republics, in 19 regions of the Russian Soviet Federated Socialist Republic, and in Poland, Czechoslovakia, Yugoslavia, Greece, and the Balkans (hereinafter called the "Eastern Countries").

From the 1st September 1939, when the German Armed Forces invaded Poland, and from the 22nd June 1941, when they invaded the U.S.S.R., the German Government and the German High Command adopted a systematic policy of murder and ill-treatment of the civilian populations of and in the Eastern Countries as they were successively occupied by the German Armed Forces. These murders and ill-treatments were carried on continuously until the German Armed Forces were driven out of the said countries.

Such murders and ill-treatments included:

(a) Murders and ill-treatments at concentration camps and similar establishments set up by the Germans in the Eastern Countries and in Eastern Germany including those set up at Maidanek and Auschwitz.

The said murders and ill-treatments were carried out by divers means including all those set out above, as follows:

About 1½ million persons were exterminated in Maidanek and about 4 million persons were exterminated in Auschwitz, among whom were citizens of Poland, the U.S.S.R., the United States of America, Great Britain, Czechoslovakia, France, and other countries.

In the Lwow region and in the city of Lwow the Germans exterminated about 700,000 Soviet people, including 70 persons in the field of the arts, science, and technology, and also citizens of the U.S.A., Great Britain, Czechoslovakia, Yugoslavia, and Holland, brought to this region from other concentration camps.

In the Jewish ghetto from 7 September 1941 to 6 July 1943 over 133,000 persons were tortured and shot.

Mass shooting of the population occurred in the suburbs of the city and in the Livenitz forest.

In the Ganov camp 200,000 citizens were exterminated. The most refined methods of cruelty were employed in this extermination, such as disembowelling and the freezing of human beings in tubs of water. Mass shootings took place to the accompaniment of the music of an orchestra recruited from the persons interned.

Beginning with June 1943 the Germans carried out measures to hide the evidence of their crimes. They exhumed and burned corpses, and they crushed the bones with machines and used them for fertilizer.

At the beginning of 1944, in the Ozarichi region of the Bielorussian S.S.R., before liberation by the Red Army, the Germans established three concentration camps without shelters, to which they committed tens of thousands of persons from the neighbouring territories. They intentionally brought many people to these camps

from typhus hospitals, for the purpose of infecting the other persons interned and for spreading the disease in territories from which the Germans were driven by the Red Army. In these camps there were many murders and crimes.

In the Estonian S.S.R. they shot tens of thousands of persons and in one day alone, 19 September 1944, in Camp Kloga, the Germans shot 2,000 peaceful citizens. They burned the bodies on bonfires.

In the Lithuanian S.S.R. there were mass killings of Soviet citizens, namely: in Panerai at least 100,000; in Kaunas more than 70,000; in Alitus about 60,000; at Prenai more than 3,000; in Villiampol about 8,000; in Mariampol about 7,000; in Trakai and neighbouring towns 37,640.

In the Latvian S.S.R. 577,000 persons were murdered.

As a result of the whole system of internal order maintained in all camps, the interned persons were doomed to die.

In a secret instruction entitled "The Internal Regime in Concentration Camps", signed personally by Himmler in 1941 severe measures of punishment were set forth for the internees. Masses of prisoners of war were shot, or died from the cold and torture.

(b) Murders and ill-treatments at places in the Eastern Countries and in the Soviet Union, other than in the camps referred to in (a) above, included, on various dates during the occupation by the German Armed Forces:

The destruction in the Smolensk region of over 135,000 Soviet citizens.

Among these, near the village of Kholmetz of the Sychev region, when the military authorities were required to remove the mines from an area, on the order of the commander of the 101st German Infantry Division, Major General Fisler, the German soldiers gathered the inhabitants of the village of Kholmetz and forced them to remove mines from the road. All of these people lost their lives as a result of exploding mines.

In the Leningrad region there were shot and tortured over 172,000 persons, including 20,000 persons who were killed in the city of Leningrad by the barbarous artillery barrage and the bombings.

In the Stavropol region in an anti-tank trench close to the station of Mineralniye Vodi, and in other cities, tens of thousands of persons were exterminated.

In Pyatigorsk many were subjected to torture and criminal treatment, including suspension from the ceiling and other methods. Many of the victims of these tortures were then shot.

In Krasnodar some 6,700 civilians were murdered by poison gas in gas vans, or were shot and tortured.

In the Stalingrad region more than 40,000 persons were killed and tortured. After the Germans were expelled from Stalingrad, more than a thousand mutilated bodies of local inhabitants were found with marks of torture. One hundred and thirty-nine women had their arms painfully bent backward and held by wires. From some their breasts had been cut off and their ears, fingers, and toes had been amputated. The bodies bore the marks of burns. On the bodies of the men the five-pointed star was burned with an iron or cut with a knife. Some were disembowelled.

In Orel over 5,000 persons were murdered.

In Novgorod and in the Novgorod region many thousands of Soviet citizens were killed by shooting, starvation, and torture. In Minsk tens of thousands of citizens were similarly killed.

In the Crimea peaceful citizens were gathered on barges, taken out to sea and drowned, over 144,000 persons being exterminated in this manner.

In the Soviet Ukraine there were monstrous criminal acts of the Nazi conspirators. In Babi Yar, near Kiev, they shot over 100,000 men, women, children, and old people. In this city in January 1941, after the explosion in German headquarters on Dzerzhinsky Street the Germans arrested as hostages 1,250 persons — old men, minors, women with nursing infants. In Kiev they killed over 195,000 persons.

In Rovno and the Rovno region they killed and tortured over 100,000 peaceful citizens.

In Dnepropetrovsk, near the Transport Institute, they shot or threw alive into a great ravine 11,000 women, old men, and children.

In Kamenetz-Podolsk region 31,000 Jews were shot and exterminated, including 13,000 persons brought there from Hungary.

In the Odessa region at least 200,000 Soviet citizens were killed.

In Kharkov about 195,000 persons were either tortured to death, shot, or gassed in gas vans.

In Gomel the Germans rounded up the population in prison, and tortured and tormented them, and then took them to the center of the city and shot them in public.

In the city of Lyda in the Grodnen region, on 8 May 1942, 5,670 persons were completely undressed, driven into pens in groups of 100, and then shot by machine guns. Many were thrown in the graves while they were still alive.

Along with adults the Nazi conspirators mercilessly destroyed even children. They killed them with their parents, in groups and alone. They killed them in children's homes and hospitals, burying the living in the graves, throwing them into flames, stabbing them

with bayonets, poisoning them, conducting experiments upon them, extracting their blood for the use of the German Army, throwing them into prison and Gestapo torture chambers and concentration camps, where the children died from hunger, torture, and epidemic diseases.

From 6 September to 24 November 1942, in the region of Brest, Pinsk, Kobren, Dyvina, Malority, and Berezy-Kartuzsky about 400 children were shot by German punitive units.

In the Yanov camp in the city of Lwow the Germans killed 8,000 children in two months.

In the resort of Tiberda the Germans annihilated 500 children suffering from tuberculosis of the bone, who were in the sanatorium for the cure.

On the territory of the Latvian S.S.R. the German usurpers killed thousands of children, which they had brought there with their parents from the Bielorussian S.S.R., and from the Kalinin, Kaluga, and other regions of the R.S.F.S.R.

In Czechoslovakia as a result of torture, beating, hanging, and shooting, there were annihilated in Gestapo prisons in Brno, Seim, and other places over 20,000 persons. Moreover many thousands of internees were subjected to criminal treatment, beatings, and torture.

Both before the war as well as during the war thousands of Czech patriots, in particular Catholics and Protestants, lawyers, doctors, teachers, *et cetera,* were arrested as hostages and imprisoned. A large number of these hostages were killed by the Germans.

In Greece in October 1941 the male populations between 16 and 60 years of age of the Greek villages Amelofito, Kliston, Kizonia Mesovunos, Selli, Ano-Kerzilion, and Kato-Kerzilion were shot — in all 416 persons.

In Yugoslavia many thousands of civilians were murdered. Other examples are given under Paragraph (D), "Killing of Hostages", below.

THE PRESIDENT: Paragraph (B) on Page 16 was read by the Chief Prosecutor for the French Republic. Paragraph 2 on Page 17 was omitted by him. So had you better not go on at Paragraph 2 at Page 17?

LT. COL. OZOL: 2. From the Eastern Countries:

The German occupying authorities deported from the Soviet Union to slavery about 4,978,000 Soviet citizens.

Seven hundred fifty thousand Czechoslovakian citizens were taken away from Czechoslovakia and forced to work in the German war machine in the interior of Germany.

On June 4, 1941 in the city of Zagreb, Yugoslavia, a meeting of German representatives was called with the Councillor Von Troll presiding. The purpose was to set up the means of deporting the Yugoslav population from Slovenia. Tens of thousands of persons were deported in carrying out this plan.

Murder and ill-treatment of prisoners of war, and of other . . .

THE PRESIDENT: Will you read Paragraph 2 at page 18?

LT. COL. OZOL: 2. In the Eastern Countries:

At Orel prisoners of war were exterminated by starvation, shooting, exposure, and poisoning.

Soviet prisoners of war were murdered *en masse* on orders from the High Command and the headquarters of the SIPO and SD. Tens of thousands of Soviet prisoners of war were tortured and murdered at the "Gross Lazaret" at Slavuta.

In addition, many thousands of the persons referred to in Paragraph VIII (A) 2, above, were Soviet prisoners of war.

Prisoners of war who escaped and were recaptured were handed over to SIPO and SD for shooting.

Frenchmen fighting with the Soviet Army who were captured were handed over to the Vichy Government for "proceedings."

In March 1944, 50 R.A.F. officers who escaped from Stalag Luft III at Sagan were murdered when captured.

In September 1941, 11,000 Polish officers who were prisoners of war were killed in the Katyn Forest near Smolensk.

In Yugoslavia the German Command and the occupying authorities in the person of the chief officials of the police, the SS troops (Police Lieutenant General Rosener) and the Divisional Group Command (General Kubler and others) in the period 1941-43 ordered the shooting of prisoners of war.

THE PRESIDENT: Now, Paragraph 2 of (D).

CAPTAIN V. V. KUCHIN (Assistant Prosecutor for the U.S.S.R.) *[Continuing the reading of the Indictment]:* 2. In the Eastern Countries:

At Kragnevatz in Yugoslavia 2,300 hostages were shot in October 1941. At Kraljero in Yugoslavia 5,000 hostages were shot.

THE PRESIDENT: Will you turn now to (E), Paragraph 2, Page 21?

CAPT. KUCHIN: 2. Eastern Countries:

During the occupation of the Eastern Countries the German Government and the German High Command carried out, as a systematic policy, a continuous course of plunder and destruction including:

On the territory of the Soviet Union the Nazi conspirators destroyed or severely damaged 1,710 cities and more than 70,000

villages and hamlets, more than 6 million buildings and rendered homeless about 25 million persons.

Among the cities which suffered most destruction are Stalingrad, Sevastopol, Kiev, Minsk, Odessa, Smolensk, Novgorod, Pskov, Orel, Kharkov, Voronezh, Rostov-on-Don, Stalino, and Leningrad.

As is evident from an official memorandum of the German Command, the Nazi conspirators planned the complete annihilation of entire Soviet cities. In a completely secret order of the Chief of the Naval Staff (SKL Ia No. 1601/41, dated 29 September 1941) addressed only to Staff officers, it was said:

"The Führer has decided to erase Petersburg from the face of the earth. The existence of this large city will have no further interest after Soviet Russia is destroyed. Finland has also said that the existence of this city on her new border is not desirable from her point of view. The original request of the Navy that docks, harbor, *et cetera,* necessary for the fleet be preserved is known to the Supreme Command of the German Armed Forces, but the basic principles of carrying out operations against Petersburg do not make it possible to satisfy this request.

"It is proposed to approach near to the city and to destroy it with the aid of an artillery barrage from weapons of different calibers and with long air attacks...

"The problem of the lives of the population and of their provisioning is a problem which cannot and must not be decided by us.

"In this war . . . we are not interested in preserving even a part of the population of this large city."

The Germans destroyed 427 museums, among them the wealthy museums of Leningrad, Smolensk, Stalingrad, Novgorod, Poltava, and others.

In Pyatigorsk the art objects brought there from the Rostov museum were seized.

The losses suffered by the coal mining industry alone in the Stalin region amount to 2 billion rubles. There was colossal destruction of industrial establishments in Makerevka, Carlovka, Yenakievo, Konstantinovka, Mariupol, from which most of the machinery and factories were removed.

Stealing of huge dimensions and the destruction of industrial, cultural, and other property was typified in Kiev. More than 4 million books, magazines, and manuscripts (many of which were very valuable and even unique) and a large number of artistic productions and divers valuables were stolen and carried away.

Many valuable art productions were taken away from Riga.

The extent of the plunder of cultural valuables is evidenced by the fact that 100,000 valuable volumes and 70 cases of ancient periodicals and precious monographs were carried away by Rosenberg's staff alone.

Among further examples of these crimes are:

Wanton devastation of the city of Novgorod and of many historical and artistic monuments there; wanton devastation and plunder of the city of Rovno and of its province; the destruction of the industrial, cultural, and other property in Odessa; the destruction of cities and villages in Soviet Karelia; the destruction in Estonia of cultural, industrial, and other buildings; the destruction of medical and prophylactic institutes; the destruction of agriculture and industry in Lithuania; the destruction of cities in Latvia.

The Germans approached monuments of culture, dear to the Soviet people, with special hatred. They broke up the estate of the poet Pushkin in Mikhailovskoye, desecrated his grave, and destroyed the neighboring villages and the Svyatogor monastery.

They destroyed the estate and museum of Leo Tolstoy, "Yasnaya Polyana" and desecrated the grave of the great writer. They destroyed, in Klin, the museum of Tchaikovsky and, in Penaty, the museum of the painter Repin and many others.

The Nazi conspirators destroyed 1,670 Greek Orthodox churches, 237 Roman Catholic churches, 67 chapels, 532 synagogues, *et cetera.*

They also broke up, desecrated and senselessly destroyed the most valuable monuments of the Christian Church, such as the Kievo-Pecherskaya Lavra, Novy Jerusalem in the Istrin region, and the most ancient monasteries and churches.

Destruction in Estonia of cultural, industrial, and other premises; burning down of many thousands of residential buildings; removal of 10,000 works of art; destruction of medical and prophylactic institutions; plunder and removal to Germany of immense quantities of agricultural stock including horses, cows, pigs, poultry, beehives, and agricultural machines of all kinds.

Destruction of agriculture, enslavement of peasants, and looting of stock and produce in Lithuania.

In the Latvian Republic destruction of the agriculture by the looting of all stock, machinery, and produce.

Carrying away by Rosenberg's headquarters of 100,000 valuable volumes and 70 cases of ancient periodicals and precious monographs; wanton destruction of libraries and other cultural buildings.

The result of this policy of plunder and destruction was to lay waste the land and cause utter desolation.

The over-all value of the material loss which the U.S.S.R. has borne, is computed to be 679 billion rubles, in State prices of 1941.

Following the German occupation of Czechoslovakia on 15 March 1939 the defendants seized and stole large stocks of raw materials, copper, tin, iron, cotton, and food; caused to be taken to Germany large amounts of railway rolling stock, and many engines, carriages, steam vessels and trolley buses; robbed libraries, laboratories, and art museums of books, pictures, objects of art, scientific apparatus, and furniture; stole all gold reserves and foreign exchange of Czechoslovakia, including 23,000 kilograms of gold, of a nominal value of 5,265,000 Pounds; fraudulently acquired control and thereafter looted the Czech banks and many Czech industrial enterprises; and otherwise stole, looted, and misappropriated Czechoslovak public and private property. The total sum of defendants' economic spoliation of Czechoslovakia from 1938 to 1945 is estimated at 200 billion Czechoslovak crowns.

(G) Wanton destruction of cities, towns, and villages, and devastation not justified by military necessity.

The defendants wantonly destroyed cities . . .

THE PRESIDENT: Will you go to Paragraph 2 of (G)? The French read the first paragraph. Do you want to go to Paragraph 2 of (G)?

CAPT. KUCHIN: I have begun . . .

THE PRESIDENT: I thought we had read Paragraph 1. We might take up at Paragraph 2, beginning "In the Eastern Countries the defendants pursued . . ."

CAPT. KUCHIN: 2. Eastern Countries:

In the Eastern Countries the defendants pursued a policy of wanton destruction and devastation; some particulars of this, without prejudice to the production of evidence of other cases, are set out above under the heading "Plunder of Public and Private Property".

In Greece in 1941 the villages of Amelofito, Kliston, Kizonia, Messovunos, Selli, Ano-Kerzilion, and Kato-Kerzilion were utterly destroyed.

In Yugoslavia on 15 August 1941 the German military command officially announced that the village of Skela was burned to the ground and the inhabitants killed on the order of the command.

On the order of the Field Commander Hoersterberg a punitive expedition from the SS troops and the field police destroyed the villages of Machkovats and Kriva Reka in Serbia and all the inhabitants were killed.

General Fritz Neidhold (369 Infantry Division), on 11 September 1944, gave an order to destroy the villages of Zagniezde and Udora, hanging all the men and driving away all the women and children.

In Czechoslovakia the Nazi conspirators also practiced the senseless destruction of populated places. Lezaky and Lidice were burnt to the ground and the inhabitants killed.

(H) Conscription of civilian labor.

Throughout the occupied territories the defendants conscripted and forced the inhabitants to labor and requisitioned their services....

THE PRESIDENT: I think Paragraph (H) has been read, the first paragraph of it. There only remains for you to read Paragraph 2 of (H).

CAPT. KUCHIN: 2. Eastern Countries:

Of the large number of citizens of the Soviet Union and of Czechoslovakia referred to under Count Three VIII (B) 2 above, many were so conscripted for forced labor.

IX. Individual, group and organization responsibility for the offense stated in Count Three.

Reference is hereby made to Appendix A of this Indictment for a statement of the responsibility of the individual defendants for the offense set forth in this Count Three of the Indictment. Reference is hereby made to Appendix B of this Indictment for a statement of the responsibility of the groups and organizations named herein as criminal groups and organizations for the offense set forth in this Count Three of the Indictment.

COUNT FOUR—CRIMES AGAINST HUMANITY, Charter, Article 6, especially 6 (c).

X. Statement of the offense.

All the defendants committed Crimes against Humanity during a period of years preceding 8 May 1945, in Germany and in all those countries and territories occupied by the German Armed Forces since 1 September 1939, and in Austria and Czechoslovakia and in Italy and on the High Seas.

All the defendants, acting in concert with others, formulated and executed a Common Plan or Conspiracy to commit Crimes against Humanity as defined in Article 6 (c) of the Charter. This plan involved, among other things, the murder and persecution of all who were or who were suspected of being hostile to the Nazi Party and all who were or who were suspected of being opposed to the common plan alleged in Count One.

The said Crimes against Humanity were committed by the defendants, and by other persons for whose acts the defendants are responsible (under Article 6 of the Charter) as such other persons, when committing the said War Crimes, performed their acts in execution of a Common Plan and Conspiracy to commit the said

War Crimes, in the formulation and execution of which plan and conspiracy all the defendants participated as leaders, organizers, instigators, and accomplices.

These methods and crimes constituted violations of international conventions, of internal penal laws, of the general principles of criminal law as derived from the criminal law of all civilized nations, and were involved in and part of a systematic course of conduct. The said acts were contrary to Article 6 of the Charter.

The Prosecution will rely upon the facts pleaded under Count Three as also constituting Crimes against Humanity.

(A) Murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations before and during the war.

For the purposes set out above, the defendants adopted a policy of persecution, repression, and extermination of all civilians in Germany who were, or who were believed to, or who were believed likely to become, hostile to the Nazi Government and the Common Plan or Conspiracy described in Count One. They imprisoned such persons without judical process, holding them in "protective custody" and concentration camps, and subjected them to persecution, degradation, despoilment, enslavement, torture, and murder.

Special courts were established to carry out the will of the conspirators; favored branches or agencies of the State and Party were permitted to operate outside the range even of nazified law and to crush all tendencies and elements which were considered "undesirable". The various concentration camps included Buchenwald, which was established in 1933, and Dachau, which was established in 1934. At these and other camps the civilians were put to slave labor and murdered and ill-treated by divers means, including those set out in Count Three above, and these acts and policies were continued and extended to the occupied countries after the 1st September 1939 and until 8th May 1945.

(B) Persecution on political, racial, and religious grounds in execution of and in connection with the common plan mentioned in Count One.

As above stated, in execution of and in connection with the common plan mentioned in Count One, opponents of the German Government were exterminated and persecuted. These persecutions were directed against Jews. They were also directed against persons whose political belief or spiritual aspirations were deemed to be in conflict with the aims of the Nazis.

Jews were systematically persecuted since 1933; they were deprived of liberty, thrown into concentration camps where they were murdered and ill-treated. Their property was confiscated.

Hundreds of thousands of Jews were so treated before the 1st September 1939.

Since the 1st September 1939 the persecution of the Jews was redoubled; millions of Jews from Germany and from the occupied Western Countries were sent to the Eastern Countries for extermination.

Particulars by way of example and without prejudice to the production of evidence of other cases are as follows:

The Nazis murdered amongst others Chancellor Dollfuss, the Social Democrat Breitscheid, and the Communist Thälmann. They imprisoned in concentration camps numerous political and religious personages, for example, Chancellor Schuschnigg and Pastor Niemöller.

In November 1938, by orders of the Chief of the Gestapo, anti-Jewish demonstrations all over Germany took place. Jewish property was destroyed; 30,000 Jews were arrested and sent to concentration camps and their property confiscated.

Under paragraph VIII (A), above, millions of the persons there mentioned as having been murdered and ill-treated were Jews.

Among other mass murders of Jews were the following:

At Kislovodsk all Jews were made to give up their property; 2,000 were shot in an anti-tank ditch at Mineralniye Vodi; 4,300 other Jews were shot in the same ditch; 60,000 Jews were shot on an island on the Dvina near Riga; 20,000 Jews were shot at Lutsk; 32,000 Jews were shot at Sarny; 60,000 Jews were shot at Kiev and Dniepropetrovsk.

Thousands of Jews were gassed weekly by means of gas-wagons which broke down from overwork.

As the Germans retreated before the Soviet Army they exterminated Jews rather than allow them to be liberated. Many concentration camps and ghettos were set up in which Jews were incarcerated and tortured, starved, subjected to merciless atrocities, and finally exterminated.

About 70,000 Jews were exterminated in Yugoslavia.

XI. Individual, group and organization responsibility for the offense stated in Count Four.

Reference is hereby made to Appendix A of this Indictment for a statement of the responsibility of the individual defendants for the offense set forth in this Count Four of the Indictment. Reference is hereby made to Appendix B of this Indictment for a statement of the responsibility of the groups and organizations named herein as criminal groups and organizations for the offense set forth in the Count Four of the Indictment.

Wherefore, this Indictment is lodged with the Tribunal in English, French, and Russian, each text having equal authenticity, and the charges herein made against the above-named defendants are hereby presented to the Tribunal.

Hartley Shawcross, acting on behalf of the United Kingdom of Great Britain and Northern Ireland; Robert H. Jackson, acting on behalf of the United States of America; François de Menthon, acting on behalf of the French Republic; R. Rudenko, acting on behalf of the Union of Soviet Socialist Republics. Berlin, 6th October 1945.

THE PRESIDENT: Has anybody been designated to read the appendices?

MR. ALDERMAN: May it please the Tribunal, I shall read Appendix A and Appendix B, and the British Delegation will read Appendix C. One word of explanation as to Appendix A. The Court will have observed that the defendants are seated in the dock in the same order in which they are named in the Indictment. By a mechanical slip-up they are not named in Appendix A in exactly the same order. I think it would be too much difficulty for the interpreters or for me to arrange them in the same order, and if the Court will permit I will read Appendix A as it is printed.

APPENDIX A—STATEMENT OF INDIVIDUAL RESPONSIBILITY FOR CRIMES SET OUT IN COUNTS ONE, TWO, THREE, AND FOUR.

The statements hereinafter set forth following the name of each individual defendant constitute matters upon which the Prosecution will rely *inter alia* as pursuant to Article 6 establishing the individual responsibility of the defendant:

GÖRING. The Defendant Göring between 1932 and 1945 was a member of the Nazi Party, Supreme Leader of the SA, general in the SS, a member and President of the Reichstag, Minister of the Interior of Prussia, Chief of the Prussian Police and Prussian Secret State Police, Chief of the Prussian State Council, Trustee of the Four Year Plan, Reich Minister for Air, Commander-in-Chief of the Air Force, President of the Council of Ministers for the Defense of the Reich, member of the Secret Cabinet Council, head of the Hermann Göring Industrial Combine, and Successor Designate to Hitler. The Defendant Göring used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count

One of the Indictment; he promoted the military and economic preparation for war set forth in Count One of the Indictment; he participated in the planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment, and the Crimes against Humanity set forth in Count Four of the Indictment, including a wide variety of crimes against persons and property.

RIBBENTROP. The Defendant Ribbentrop between 1932 and 1945 was a member of the Nazi Party, a member of the Nazi Reichstag, advisor to the Führer on matters of foreign policy, representative of the Nazi Party for matters of foreign policy, special German delegate for disarmament questions, Ambassador extraordinary, Ambassador in London, organizer and director of Dienststelle Ribbentrop, Reich Minister for Foreign Affairs, member of the Secret Cabinet Council, member of the Führer's political staff at general headquarters, and general in the SS. The Defendant Ribbentrop used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators as set forth in Count One of the Indictment; he promoted the preparations for war set forth in Count One of the Indictment; he participated in the political planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances as set forth in Counts One and Two of the Indictment; in accordance with the Führer Principle he executed and assumed responsibility for the execution of the foreign policy plans of the Nazi conspirators set forth in Count One of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including more particularly the crimes against persons and property in occupied territories.

HESS. The Defendant Hess between 1921 and 1941 was a member of the Nazi Party, Deputy to the Führer, Reich Minister without Portfolio, member of the Reichstag, member of the Council of Ministers for the Defense of the Reich, member of the Secret Cabinet Council, Successor Designate to the Führer after the Defendant Göring, a general in the SS and a general in the SA. The Defendant Hess used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the military, economic, and psychological preparations for war set forth in Count One of the Indictment; he participated in the political planning and preparation for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; he participated in the preparation and planning of foreign policy plans of the Nazi conspirators set forth in Count One of the Indictment; he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including a wide variety of crimes against persons and property.

KALTENBRUNNER. The Defendant Kaltenbrunner between 1932 and 1945 was a member of the Nazi Party, a general in the SS, a member of the Reichstag, a general of the Police, State Secretary for Security in Austria in charge of the Austrian Police, Police Leader of Vienna, Lower and Upper Austria, Head of the Reich Main Security Office and Chief of the Security Police and Security Service. The Defendant Kaltenbrunner used the foregoing positions and his personal influence in such a manner that:

He promoted the consolidation of control over Austria seized by the Nazi conspirators as set forth in Count One of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment including particularly the Crimes against Humanity involved in the system of concentration camps.

ROSENBERG. The Defendant Rosenberg between 1920 and 1945 was a member of the Nazi Party, Nazi member of the Reichstag, Reichsleiter in the Nazi Party for Ideology and Foreign Policy, the editor of the Nazi newspaper *Völkischer Beobachter,* or "People's Observer", and the *NS Monatshefte,* head of the Foreign Political Office of the Nazi Party, Special Delegate for the entire Spiritual and Ideological Training of the Nazi Party, Reich Minister for the Eastern Occupied Territories, organizer of the "Einsatzstab Rosenberg", a general in the SS and a general in the SA. The Defendant Rosenberg used the foregoing positions, his personal influence and his intimate connection with the Führer in such a manner that:

He developed, disseminated, and exploited the doctrinal techniques of the Nazi conspirators set forth in Count One of the Indictment; he promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set

forth in Count One of the Indictment; he promoted the psychological preparations for war set forth in Count One of the Indictment; he participated in the political planning and preparation for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including a wide variety of crimes against persons and property.

FRANK. The Defendant Frank between 1932 and 1945 was a member of the Nazi Party, a general in the SS, a member of the Reichstag, Reich Minister without Portfolio, Reich Commissar for the Coordination of Justice, President of the International Chamber of Law and Academy of German Law, Chief of the Civil Administration of Lodz, Supreme Administrative Chief of the military district of West Prussia, Poznan, Lodz, and Krakow, and Governor General of the occupied Polish territories. The Defendant Frank used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including particularly the War Crimes and Crimes against Humanity involved in the administration of occupied territories.

BORMANN. The Defendant Bormann between 1925 and 1945 was a member of the Nazi Party, member of the Reichstag, a member of the Staff of the Supreme Command of the SA, founder and head of "Hilfskasse der NSDAP", Reichsleiter, Chief of Staff Office of the Führer's Deputy, head of the Party Chancery, Secretary of the Führer, member of the Council of Ministers for the Defense of the Reich, organizer and head of the Volkssturm, a general in the SS, and a general in the SA. The Defendant Bormann used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the preparations for war set forth in Count One of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count

Four of the Indictment, including a wide variety of crimes against persons and property.

FRICK. The Defendant Frick between 1932 and 1945 was a member of the Nazi Party, Reichsleiter, general in the SS, member of the Reichstag, Reich Minister of the Interior, Prussian Minister of the Interior, Reich Director of Elections, General Plenipotentiary for the Administration of the Reich, head of the Central Office for the Reunification of Austria and the German Reich, Director of the Central Office for the Incorporation of Sudetenland, Memel, Danzig, the Eastern Occupied Territories, Eupen, Malmedy, and Moresnet, Director of the Central Office for the Protectorate of Bohemia, Moravia, the Government General, Lower Styria, Upper Carinthia, Norway, Alsace, Lorraine, and all other occupied territories, and Reich Protector for Bohemia and Moravia. The Defendant Frick used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he participated in the planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including more particularly the crimes against persons and property in occupied territories.

LEY. The Defendant Ley between 1932 and 1945 was a member of the Nazi Party, Reichsleiter, Nazi Party Organization Manager, member of the Reichstag, leader of the German Labor Front, a general in the SA, and Joint Organizer of the Central Inspection for the Care of Foreign Workers. The Defendant Ley used the foregoing positions, his personal influence and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany as set forth in Count One of the Indictment; he promoted the preparation for war set forth in Count One of the Indictment; he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment, and in the Crimes against Humanity set forth in Count Four of the Indictment, including particularly the War Crimes and Crimes against Humanity relating to the abuse of human beings for labor in the conduct of the aggressive wars.

SAUCKEL. The Defendant Sauckel between 1921 and 1945 was a member of the Nazi Party, Gauleiter and Reichsstatthalter of

Thuringia, a member of the Reichstag, General Plenipotentiary for the Employment of Labor under the Four Year Plan, Joint Organizer with the Defendant Ley of the Central Inspection for the Care of Foreign Workers, a general in the SS, and a general in the SA. The Defendant Sauckel used the foregoing positions and his personal influence in such manner that:

He promoted the accession to power of the Nazi conspirators set forth in Count One of the Indictment; he participated in the economic preparations for wars of aggression and wars in violation of treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment, and the Crimes against Humanity set forth in Count Four of the Indictment, including particularly the War Crimes and Crimes against Humanity involved in forcing the inhabitants of occupied countries to work as slave laborers in occupied countries and in Germany.

SPEER. The Defendant Speer between 1932 and 1945 was a member of the Nazi Party, Reichsleiter, member of the Reichstag, Reich Minister for Armament and Munitions, Chief of the Organization Todt, General Plenipotentiary for Armaments in the Office of the Four Year Plan, and Chairman of the Armaments Council. The Defendant Speer used the foregoing positions and his personal influence in such a manner that:

He participated in the military and economic planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including more particularly the abuse and exploitation of human beings for forced labor in the conduct of aggressive war.

FUNK. The Defendant Funk between 1932 and 1945 was a member of the Nazi Party, Economic Adviser of Hitler, National Socialist Deputy to the Reichstag, Press Chief of the Reich Government, State Secretary of the Reich Ministry of Public Enlightenment and Propaganda, Reich Minister of Economics, Prussian Minister of Economics, President of the German Reichsbank, Plenipotentiary for Economy, and member of the Ministerial Council for the Defense of the Reich. The Defendant Funk used the foregoing positions, his personal influence, and his close connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in

Count One of the Indictment; he promoted the preparations for war set forth in Count One of the Indictment; he participated in the military and economic planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including more particularly crimes against persons and property in connection with the economic exploitation of occupied territories.

SCHACHT. The Defendant Schacht between 1932 and 1945 was a member of the Nazi Party, a member of the Reichstag, Reich Minister of Economics, Reich Minister without Portfolio and President of the German Reichsbank. The Defendant Schacht used the foregoing positions, his personal influence, and his connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the preparations for war set forth in Count One of the Indictment; and he participated in the military and economic plans and preparation of the Nazi conspirators for wars of aggression, and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment.

PAPEN. The Defendant Papen between 1932 and 1945 was a member of the Nazi Party, a member of the Reichstag, Reich Chancellor under Hitler, special Plenipotentiary for the Saar, negotiator of the Concordat with the Vatican, Ambassador in Vienna, and Ambassador in Turkey. The Defendant Papen used the foregoing positions, his personal influence, and his close connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and participated in the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the preparations for war set forth in Count One of the Indictment; and he participated in the political planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment.

KRUPP. The Defendant Krupp between 1932 and 1945 was head of Friedrich KRUPP A. G., a member of the General Economic

Council, President of the Reich Union of German Industry, and head of the Group for Mining and Production of Iron and Metals under the Reich Ministry of Economics. The Defendant Krupp used the foregoing positions, his personal influence, and his connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the preparation for war set forth in Count One of the Indictment; he participated in the military and economic planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including more particularly the exploitation and abuse of human beings for labor in the conduct of aggressive wars.

NEURATH. The Defendant Neurath between 1932 and 1945 was a member of the Nazi Party, a general in the SS, a member of the Reichstag, Reich Minister, Reich Minister of Foreign Affairs, President of the Secret Cabinet Council, and Reich Protector for Bohemia and Moravia. The Defendant Neurath used the foregoing positions, his personal influence, and his close connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators set forth in Count One of the Indictment; he promoted the preparations for war set forth in Count One of the Indictment; he participated in the political planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; in accordance with the Führer Principle he executed, and assumed responsibility for the execution of the foreign policy plans of the Nazi conspirators set forth in Count One of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including particularly the crimes against persons and property in the occupied territories.

SCHIRACH. The Defendant Schirach between 1924 and 1945 was a member of the Nazi Party, a member of the Reichstag, Reich Youth Leader on the Staff of the SA Supreme Command, Reichsleiter in the Nazi Party for Youth Education, Leader of Youth of the German Reich, head of the Hitler Jugend, Reich Defense Commissioner, and Reichsstatthalter and Gauleiter of Vienna. The

Defendant Schirach used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the psychological and educational preparations for war and the militarization of Nazi-dominated organizations set forth in Count One of the Indictment; and he authorized, directed, and participated in the Crimes against Humanity set forth in Count Four of the Indictment, including, particularly, anti-Jewish measures.

SEYSS-INQUART. The Defendant Seyss-Inquart between 1932 and 1945 was a member of the Nazi Party, a general in the SS, State Councillor of Austria, Minister of the Interior and Security of Austria, Chancellor of Austria, a member of the Reichstag, a member of the Reich Cabinet, Reich Minister without Portfolio, Chief of the Civil Administration in South Poland, Deputy Governor-General of the Polish occupied territory, and Reich Commissar for the occupied Netherlands. The Defendant Seyss-Inquart used the foregoing positions and his personal influence in such a manner that:

He promoted the seizure and the consolidation of control over Austria by the Nazi conspirators set forth in Count One of the Indictment; he participated in the political planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including a wide variety of crimes against persons and property.

STREICHER. The Defendant Streicher between 1932 and 1945 was a member of the Nazi Party, a member of the Reichstag, a general in the SA, Gauleiter of Franconia, editor in chief of the anti-Semitic newspaper *Der Stürmer*. The Defendant Streicher used the foregoing positions, his personal influence, and his close connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he authorized, directed, and participated in the Crimes against Humanity set forth in Count Four of the Indictment, including particularly the incitement of the persecution of the Jews set forth in Count One and Count Four of the Indictment.

KEITEL. The Defendant Keitel between 1938 and 1945 was Chief of the High Command of the German Armed Forces, member of the Secret Cabinet Council, member of the Council of Ministers for the Defense of the Reich, and Field Marshal. The Defendant Keitel used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the military preparations for war set forth in Count One of the Indictment; he participated in the political planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; he executed and assumed responsibility for the execution of the plans of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including particularly the War Crimes and Crimes against Humanity involved in the ill-treatment of prisoners of war and of the civilian population of occupied territories.

JODL. The Defendant Jodl between 1932 and 1945 was lieutenant colonel, Army Operations Department of the Wehrmacht, Colonel, Chief of OKW Operations Department, major general and Chief of Staff OKW and colonel general. The Defendant Jodl used the foregoing positions, his personal influence, and his close connection with the Führer in such a manner that:

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the preparations for war set forth in Count One of the Indictment; he participated in the military planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including a wide variety of crimes against persons and property.

RAEDER. The Defendant Raeder between 1928 and 1945 was Commander-in-Chief of the German Navy, Generaladmiral, Grossadmiral, Admiralinspekteur of the German Navy, and a member of the Secret Cabinet Council. The Defendant Raeder used the foregoing positions and his personal influence in such a manner that:

He promoted the preparations for war set forth in Count One of the Indictment; he participated in the political planning and prep-

aration of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; he executed, and assumed responsibility for the execution of the plans of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment, including particularly War Crimes arising out of sea warfare.

DÖNITZ. The Defendant Dönitz between 1932 and 1945 was Commanding Officer of the Weddigen U-boat Flotilla, Commander-in-Chief of the U-boat arm, Vice-Admiral, Admiral, Grossadmiral, and Commander-in-Chief of the German Navy, advisor to Hitler, and successor to Hitler as head of the German Government. The Defendant Dönitz used the foregoing positions, his personal influence, and his intimate connection with the Führer in such a manner that:

He promoted the preparations for war set forth in Count One of the Indictment; he participated in the military planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment, including particularly the crimes against persons and property on the High Seas.

FRITZSCHE. The Defendant Fritzsche between 1933 and 1945 was a member of the Nazi Party, editor-in-chief of the official German news agency, "Deutsches Nachrichten Büro", head of the Wireless News Service and of the Home Press Division of the Reich Ministry of Propaganda, Ministerialdirektor of the Reich Ministry of Propaganda, Head of the Radio Division of the Propaganda Department of the Nazi Party, and Plenipotentiary for the Political Organization of the Greater German Radio. The Defendant Fritzsche used the foregoing positions and his personal influence to disseminate and exploit the principal doctrines of the Nazi conspirators set forth in Count One of the Indictment, and to advocate, encourage, and incite the commission of the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment including, particularly, anti-Jewish measures and the ruthless exploitation of occupied territories.

APPENDIX B—STATEMENT OF CRIMINALITY OF GROUPS AND ORGANIZATIONS.

The statements hereinafter set forth, following the name of each group or organization named in the Indictment as one which should be declared criminal, constitute matters upon which the Prosecution will rely *inter alia* as establishing the criminality of the group or organization:

"Die Reichsregierung (Reich Cabinet)" referred to in the Indictment consists of persons who were:

(i) Members of the ordinary cabinet after 30 January 1933, the date on which Hitler became Chancellor of the German Republic. The term "ordinary cabinet" as used herein means the Reich Ministers, i. e., heads of departments of the central Government; Reich Ministers without portfolio; State Ministers acting as Reich Ministers; and other officials entitled to take part in meetings of this cabinet.

(ii) Members of Der Ministerrat für die Reichsverteidigung (Council of Ministers for the Defense of the Reich).

(iii) Members of Der Geheime Kabinettsrat (Secret Cabinet Council). Under the Führer, these persons functioning in the foregoing capacities and in association as a group, possessed and exercised legislative, executive, administrative, and political powers and functions of a very high order in the system of German Government. Accordingly, they are charged with responsibility for the policies adopted and put into effect by the Government including those which comprehended and involved the commission of the crimes referred to in Counts One, Two, Three, and Four of the Indictment.

"Das Korps der Politischen Leiter der Nationalsozialistischen Deutschen Arbeiterpartei (Leadership Corps of the Nazi Party)" referred to in the Indictment consists of persons who were at any time, according to common Nazi terminology, "Politische Leiter" (Political Leaders) of any grade or rank.

The Politischen Leiter comprised the leaders of the various functional offices of the Party (for example, the Reichsleitung or Party Reich Directorate, and the Gauleitung, or Party Gau Directorate), as well as the territorial leaders of the Party (for example, the Gauleiter).

The Politischen Leiter were a distinctive and elite group within the Nazi Party proper and as such were vested with special prerogatives. They were organized according to the Leadership Principle and were charged with planning, developing, and imposing upon their followers the policies of the Nazi Party. Thus the territorial leaders among them were called Hoheitsträger, or bearers

of sovereignty, and were entitled to call upon and utilize the various Party formations when necessary for the execution of Party policies.

Reference is hereby made to the allegations in Count One of the Indictment showing that the Nazi Party was the central core of the Common Plan or Conspiracy therein set forth. The Politischen Leiter, as a major power within the Nazi Party proper, and functioning in the capacities above described and in association as a group, joined in the Common Plan or Conspiracy, and accordingly share responsibility for the crimes set forth in Counts One, Two, Three, and Four of the Indictment.

The Prosecution expressly reserves the right to request, at any time before sentence is pronounced, that Politischer Leiter of subordinate grades or ranks or of other types or classes, to be specified by the prosecution, be excepted from further proceedings in this Case Number 1, but without prejudice to other proceedings or actions against them.

"Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS) including Der Sicherheitsdienst (commonly known as the SD)" referred to in the Indictment consists of the entire corps of the SS and all offices, departments, services, agencies, branches, formations, organizations, and groups of which it was at any time comprised or which were at any time integrated in it, including but not limited to, the Allgemeine SS, the Waffen SS, the SS Totenkopf Verbände, SS Polizei Regimenter, and the Sicherheitsdienst des Reichsführers SS (commonly known as the SD).

The SS, originally established by Hitler in 1925 as an elite section of the SA to furnish a protective guard for the Führer and Nazi Party leaders, became an independent formation of the Nazi Party in 1934 under the leadership of the Reichsführer SS, Heinrich Himmler. It was composed of voluntary members, selected in accordance with Nazi biological, racial, and political theories, completely indoctrinated in Nazi ideology and pledged to uncompromising obedience to the Führer. After the accession of the Nazi conspirators to power, it developed many departments, agencies, formations, and branches and extended its influence and control over numerous fields of governmental and Party activity. Through Heinrich Himmler, as Reichsführer SS and Chief of the German Police, agencies and units of the SS and of the Reich were joined in operation to form a unified repressive police force. The Sicherheitsdienst des Reichsführers SS (commonly known as the SD), a department of the SS, was developed into a vast espionage and counter-intelligence system which operated in conjunction with the Gestapo and criminal police in detecting, suppressing, and eliminating tendencies, groups, and individuals deemed hostile or poten-

tially hostile to the Nazi Party, its leaders, principles, and objectives, and eventually was combined with the Gestapo and criminal police in a single security police department, the Reich Main Security Office.

Other branches of the SS developed into an armed force and served in the wars of aggression referred to in Counts One and Two of the Indictment. Through other departments and branches the SS controlled the administration of concentration camps and the execution of Nazi racial, biological, and resettlement policies. Through its numerous functions and activities it served as the instrument for insuring the domination of Nazi ideology and protecting and extending the Nazi regime over Germany and occupied territories. It thus participated in and is responsible for the crimes referred to in Counts One, Two, Three, and Four of the Indictment.

"Die Geheime Staatspolizei (Secret State Police, commonly known as the Gestapo)" referred to in the Indictment consists of the headquarters, departments, offices, branches, and all the forces and personnel of the Geheime Staatspolizei organized or existing at any time after 30 January 1933, including the Geheime Staatspolizei of Prussia and equivalent secret or political police forces of the Reich and the components thereof.

The Gestapo was created by the Nazi conspirators immediately after their accession to power, first in Prussia by the Defendant Göring and shortly thereafter in all other states in the Reich. These separate secret and political police forces were developed into a centralized, uniform organization operating through a central headquarters and through a network of regional offices in Germany and in occupied territories. Its officials and operatives were selected on the basis of unconditional acceptance of Nazi ideology, were largely drawn from members of the SS, and were trained in SS and SD schools. It acted to suppress and eliminate tendencies, groups, and individuals deemed hostile or potentially hostile to the Nazi Party, its leaders, principles, and objectives, and to repress resistance and potential resistance to German control in occupied territories. In performing these functions it operated free from legal control, taking any measures it deemed necessary for the accomplishment of its missions.

Through its purposes, activities and the means it used, it participated in and is responsible for the commission of the crimes set forth in Counts One, Two, Three, and Four of the Indictment.

"Die Sturmabteilungen der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SA)." That organization referred to in the Indictment was a formation of the Nazi Party under the immediate jurisdiction of the Führer, organized on military lines, whose membership was composed of volunteers serving

as political soldiers of the Party. It was one of the earliest formations of the Nazi Party and the original guardian of the National Socialist movement. Founded in 1921 as a voluntary military formation, it was developed by the Nazi conspirators before their accession to power into a vast private army and utilized for the purpose of creating disorder, and terrorizing and eliminating political opponents. It continued to serve as an instrument for the physical, ideological, and military training of Party members and as a reserve for the German Armed Forces. After the launching of the wars of aggression, referred to in Counts One and Two of the Indictment, the SA not only operated as an organization for military training but provided auxiliary police and security forces in occupied territories, guarded prisoner-of-war camps and concentration camps and supervised and controlled persons forced to labor in Germany and occupied territories.

Through its purposes and activities and the means it used it participated in and is responsible for the commission of the crimes set forth in Counts One, Two, Three, and Four of the Indictment.

The "General Staff and High Command of the German Armed Forces" referred to in the Indictment consists of those individuals who between February 1938 and May 1945 were the highest commanders of the Wehrmacht, the Army, the Navy, and the Air Forces. The individuals comprising this group are the persons who held the following appointments:

Oberbefehlshaber der Kriegsmarine (Commander in Chief of the Navy); Chef (and, formerly, Chef des Stabes) der Seekriegsleitung (Chief of Naval War Staff); Oberbefehlshaber des Heeres (Commander in Chief of the Army); Chef des Generalstabes des Heeres (Chief of the General Staff of the Army); Oberbefehlshaber der Luftwaffe (Commander in Chief of the Air Force); Chef des Generalstabes der Luftwaffe (Chief of the General Staff of the Air Force); Chef des Oberkommandos der Wehrmacht (Chief of the High Command of the Armed Forces); Chef des Führungsstabes des Oberkommandos der Wehrmacht (Chief of the Operations Staff of the High Command of the Armed Forces); Stellvertretender Chef des Führungsstabes des Oberkommandos der Wehrmacht (Deputy Chief of the Operations Staff of the High Command of the Armed Forces); Commanders-in-Chief in the field, with the status of Oberbefehlshaber, of the Wehrmacht, Navy, Army, Air Force.

Functioning in such capacities and in association as a group at the highest level in the German Armed Forces organization, these persons had a major responsibility for the planning, preparation, initiation, and waging of illegal war as set forth in Counts One and Two of the Indictment and for the War Crimes and Crimes

against Humanity involved in the execution of the Common Plan or Conspiracy set forth in Counts Three and Four of the Indictment.

SIR DAVID MAXWELL-FYFE (Continuing the reading of the Indictment):

APPENDIX C — CHARGES AND PARTICULARS OF VIOLATIONS OF INTERNATIONAL TREATIES, AGREEMENTS, AND ASSURANCES CAUSED BY THE DEFENDANTS IN THE COURSE OF PLANNING, PREPARING AND INITIATING THE WARS.

I. Charge:

Violation of the Convention for the Pacific Settlement of International Disputes signed at The Hague, 29 July 1899.

Particulars: In that Germany did, by force and arms, on the dates specified in Column 1, invade the territory of the Sovereigns specified in Column 2, respectively, without first having attempted to settle its disputes with the said Sovereigns by pacific means.

(Column 1)	(Column 2)
6 April 1941	Kingdom of Greece
6 April 1941	Kingdom of Yugoslavia

II. Charge:

Violation of the Convention for the Pacific Settlement of International Disputes signed at The Hague, 18 October 1907.

Particulars: In that Germany did, on or about the dates specified in Column 1, by force of arms invade the territory of the Sovereigns specified in Column 2, respectively, without having first attempted to settle its disputes with the said Sovereigns by pacific means.

(Column 1)	(Column 2)
1 September 1939	Republic of Poland
9 April 1940	Kingdom of Norway
9 April 1940	Kingdom of Denmark
10 May 1940	Grand-Duchy of Luxembourg
10 May 1940	Kingdom of Belgium
10 May 1940	Kingdom of the Netherlands
22 June 1941	Union of Soviet Socialist Republics

III. Charge:

Violation of Hague Convention III, Relative to the Opening of Hostilities, signed 18 October 1907.

Particulars: In that Germany did, on or about the dates specified in Column 1, commence hostilities against the countries specified in Column 2, respectively, without previous warning in the form of a reasoned declaration of war or an ultimatum with conditional declaration of war.

(Column 1)	(Column 2)
1 September 1939	Republic of Poland
9 April 1940	Kingdom of Norway
9 April 1940	Kingdom of Denmark
10 May 1940	Kingdom of Belgium
10 May 1940	Kingdom of the Netherlands
10 May 1940	Grand-Duchy of Luxembourg
22 June 1941	Union of Soviet Socialist Republics

IV. Charge:

Violation of Hague Convention V, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, signed 18 October 1907.

Particulars:

In that Germany did, on or about the dates specified in Column 1, by force and arms of its military forces, cross into, invade, and occupy the territories of the Sovereigns specified in Column 2, respectively, then and thereby violating the neutrality of said Sovereigns.

(Column 1)	(Column 2)
9 April 1940	Kingdom of Norway
9 April 1940	Kingdom of Denmark
10 May 1940	Grand-Duchy of Luxembourg
10 May 1940	Kingdom of Belgium
10 May 1940	Kingdom of the Netherlands
22 June 1941	Union of Soviet Socialist Republics

V. Charge:

Violation of the Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles, 28 June 1919, known as the Versailles Treaty.

Particulars:

(1) In that Germany did, on and after 7 March 1936, maintain and assemble armed forces and maintain and construct military fortifications in the demilitarized zone of the Rhineland in violation of the provisions of Articles 42 to 44 of the Treaty of Versailles.

(2) In that Germany did, on or about 13 March 1938, annex Austria into the German Reich in violation of the provisions of Article 80 of the Treaty of Versailles.

(3) In that Germany did, on or about 22 March 1939, incorporate the District of Memel into the German Reich in violation of the provisions of Article 99 of the Treaty of Versailles.

(4) In that Germany did, on or about 1 September 1939, incorporate the Free City of Danzig into the German Reich in violation of the provisions of Article 100 of the Treaty of Versailles.

(5) In that Germany did, on or about 16 March 1939, incorporate the provinces of Bohemia and Moravia, formerly part of Czechoslovakia, into the German Reich in violation of the provisions of Article 81 of the Treaty of Versailles.

(6) In that Germany did, at various times in March 1935 and thereafter, repudiate various parts of Part V, Military, Naval, and Air Clauses of the Treaty of Versailles, by creating an air force, by use of compulsory military service, by increasing the size of the army beyond treaty limits, and by increasing the size of the navy beyond treaty limits.

VI. Charge:

Violation of the Treaty between the United States and Germany Restoring Friendly Relations, signed at Berlin, 25 August 1921.

Particulars:

In that Germany did, at various times in March 1935 and thereafter, repudiate various parts of Part V, Military, Naval, and Air Clauses of the Treaty Between the United States and Germany Restoring Friendly Relations by creating an air force, by use of compulsory military service, by increasing the size of the army beyond treaty limits, and by increasing the size of the navy beyond treaty limits.

VII. Charge:

Violation of the Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy, done at Locarno, 16 October 1925.

Particulars:

(1) In that Germany did, on or about 7 March 1936, unlawfully send armed forces into the Rhineland demilitarized zone of Germany, in violation of Article 1 of the Treaty of Mutual Guarantee.

(2) In that Germany did, in or about March 1936, and thereafter, unlawfully maintain armed forces in the Rhineland demilitarized zone of Germany, in violation of Article 1 of the Treaty of Mutual Guarantee.

(3) In that Germany did, on or about 7 March 1936, and thereafter, unlawfully construct and maintain fortifications in the Rhineland demilitarized zone of Germany, in violation of Article 1 of the Treaty of Mutual Guarantee.

(4) In that Germany did, on or about 10 May 1940, unlawfully attack and invade Belgium, in violation of Article 2 of the Treaty of Mutual Guarantee.

(5) In that Germany did, on or about 10 May 1940, unlawfully attack and invade Belgium, without first having attempted to settle

its dispute with Belgium by peaceful means, in violation of Article 3 of the Treaty of Mutual Guarantee.

VIII. Charge:

Violation of the Arbitration Treaty between Germany and Czechoslovakia, done at Locarno, 16 October 1925.

Particulars:

In that Germany did, on or about 15 March 1939, unlawfully by duress and threats of military might force Czechoslovakia to deliver the destiny of Czechoslovakia and its inhabitants into the hands of the Führer and Reichschancellor of Germany without having attempted to settle its dispute with Czechoslovakia by peaceful means.

IX. Charge:

Violation of the Arbitration Convention between Germany and Belgium, done at Locarno, 16 October 1925.

Particulars:

In that Germany did, on or about 10 May 1940, unlawfully attack and invade Belgium without first having attempted to settle its dispute with Belgium by peaceful means.

X. Charge:

Violation of the Arbitration Treaty between Germany and Poland, done at Locarno, 16 October 1925.

Particulars:

In that Germany did, on or about 1 September 1939, unlawfully attack and invade Poland without first having attempted to settle its dispute with Poland by peaceful means.

XI. Charge:

Violation of Convention of Arbitration and Conciliation entered into between Germany and the Netherlands on 20 May 1926.

Particulars:

In that Germany, without warning, and notwithstanding its solemn covenant to settle by peaceful means all disputes of any nature whatever which might arise between it and the Netherlands which were not capable of settlement by diplomacy and which had not been referred by mutual agreement to the Permanent Court of International Justice, did, on or about 10 May 1940, with a military force, attack, invade, and occupy the Netherlands, thereby violating its neutrality and territorial integrity and destroying its sovereign independence.

XII. Charge:

Violation of Convention of Arbitration and Conciliation entered into between Germany and Denmark on 2 June 1926.

Particulars:

In that Germany, without warning, and notwithstanding its solemn covenant to settle by peaceful means all disputes of any nature whatever which might arise between it and Denmark which were not capable of settlement by diplomacy and which had not been referred by mutual agreement to the Permanent Court of International Justice, did, on or about 9 April 1940, with a military force, attack, invade, and occupy Denmark, thereby violating its neutrality and territorial integrity and destroying its sovereign independence.

XIII. Charge:

Violation of Treaty between Germany and other Powers Providing for Renunciation of War as an Instrument of National Policy, signed at Paris 27 August 1928, known as the Kellogg-Briand Pact.

Particulars:

In that Germany did, on or about the dates specified in Column 1, with a military force, attack the Sovereigns specified in Column 2, respectively, and resort to war against such Sovereigns, in violation of its solemn declaration condemning recourse to war for the solution of international controversies, its solemn renunciation of war as an instrument of national policy in its relations with such Sovereigns, and its solemn covenant that settlement or solution of all disputes or conflicts of whatever nature or origin arising between it and such Sovereigns should never be sought except by pacific means

(Column 1)	(Column 2)
1 September 1939	Republic of Poland
9 April 1940	Kingdom of Norway
9 April 1940	Kingdom of Denmark
10 May 1940	Kingdom of Belgium
10 May 1940	Grand-Duchy of Luxembourg
10 May 1940	Kingdom of the Netherlands
6 April 1941	Kingdom of Greece
6 April 1941	Kingdom of Yugoslavia
22 June 1941	Union of Soviet Socialist Republics
11 December 1941	United States of America

XIV. Charge:

Violation of Treaty of Arbitration and Conciliation entered into between Germany and Luxembourg on 11 September 1929.

Particulars:

In that Germany, without warning, and notwithstanding its solemn covenant to settle by peaceful means all disputes which might arise between it and Luxembourg which were not capable

of settlement by diplomacy, did, on or about 10 May 1940, with a military force, attack, invade, and occupy Luxembourg, thereby violating its neutrality and territorial integrity and destroying its sovereign independence.

XV. Charge:

Violation of the Declaration of Non-Aggression entered into between Germany and Poland on 26 January 1934.

Particulars:

In that Germany proceeding to the application of force for the purpose of reaching a decision did, on or about 1 September 1939, at various places along the German-Polish frontier employ military forces to attack, invade, and commit other acts of aggression against Poland.

XVI. Charge:

Violation of German assurance given on 21 May 1935 that the inviolability and integrity of the Federal State of Austria would be recognized.

Particulars:

In that Germany did, on or about 12 March 1938, at various points and places along the German-Austria frontier, with a military force and in violation of its solemn declaration and assurance, invade and annex to Germany the territory of the Federal State of Austria.

XVII. Charge:

Violation of Austro-German Agreement of 11 July 1936.

Particulars:

In that Germany during the period from 12 February 1938 to 13 March 1938 did by duress and various aggressive acts, including the use of military force, cause the Federal State of Austria to yield up its sovereignty to the German State in violation of Germany's agreement to recognize the full sovereignty of the Federal State of Austria.

XVIII. Charge:

Violation of German assurances given on 30 January 1937, 28 April 1939, 26 August 1939, and 6 October 1939 to respect the neutrality and territorial inviolability of the Netherlands.

Particulars:

In that Germany, without warning, and without recourse to peaceful means of settling any considered differences did, on or about 10 May 1940, with a military force and in violation of its solemn assurances, invade, occupy, and attempt to subjugate the sovereign territory of the Netherlands.

XIX. Charge:

Violation of German assurances given on 30 January 1937, 13 October 1937, 28 April 1939, 26 August 1939 and 6 October 1939, to respect the neutrality and territorial integrity and inviolability of Belgium.

Particulars:

In that Germany, without warning, did on or about 10 May 1940, with a military force and in violation of its solemn assurances and declarations, attack, invade, and occupy the sovereign territory of Belgium.

XX. Charge:

Violation of assurances given on 11 March 1938 and 26 September 1938 to Czechoslovakia.

Particulars:

In that Germany, on or about 15 March 1939 did, by establishing a Protectorate of Bohemia and Moravia under duress and by the threat of force, violate the assurance given on 11 March 1938 to respect the territorial integrity of the Czechoslovak Republic and the assurance given on 26 September 1938 that, if the so-called Sudeten territories were ceded to Germany, no further German territorial claims on Czechoslovakia would be made.

XXI. Charge:

Violation of the Munich Agreement and Annexes of 29 September 1938.

Particulars:

(1) In that Germany, on or about 15 March 1939, did by duress and the threat of military intervention force the Republic of Czechoslovakia to deliver the destiny of the Czech people and country into the hands of the Führer of the German Reich.

(2) In that Germany refused and failed to join in an international guarantee of the new boundaries of the Czechoslovakian State as provided for in Annex No. 1 to the Munich Agreement.

XXII. Charge:

Violation of the solemn assurances of Germany given on 3 September 1939, 28 April 1939, and 6 October 1939 that they would not violate the independence or sovereignty of the Kingdom of Norway.

Particulars:

In that Germany, without warning did, on or about 9 April 1940, with its military and naval forces attack, invade, and commit other acts of aggression against the Kingdom of Norway.

XXIII. Charge:

Violation of German assurances given on 28 April 1939 and 26 August 1939 to respect the neutrality and territorial inviolability of Luxembourg.

Particulars:

In that Germany, without warning, and without recourse to peaceful means of settling any considered differences, did, on or about 10 May 1940, with a military force and in violation of the solemn assurances, invade, occupy, and absorb into Germany the sovereign territory of Luxembourg.

XXIV. Charge:

Violation of the Treaty of Non-Aggression between Germany and Denmark signed at Berlin 31 May 1939.

Particulars:

In that Germany without prior warning, did, on or about 9 April 1940, with its military forces, attack, invade, and commit other acts of aggression against the Kingdom of Denmark.

XXV. Charge:

Violation of Treaty of Non-Aggression entered into between Germany and U.S.S.R. on 23 August 1939.

Particulars:

(1) In that Germany did, on or about 22 June 1941, employ military forces to attack and commit acts of aggression against the U.S.S.R.

(2) In that Germany without warning or recourse to a friendly exchange of views or arbitration did, on or about 22 June 1941, employ military forces to attack and commit acts of aggression against the U.S.S.R.

XXVI. Charge:

Violation of German assurance given on 6 October 1939 to respect the neutrality and territorial integrity of Yugoslavia.

Particulars:

In that Germany without prior warning did, on or about 6 April 1941, with its military forces attack, invade and commit other acts of aggression against the Kingdom of Yugoslavia.

THE PRESIDENT: The Tribunal will now adjourn until 10 o'clock tomorrow morning.

[The Tribunal adjourned until 21 November 1945 at 1000 hours.]

SECOND DAY

Wednesday, 21 November 1945

Morning Session

THE PRESIDENT: A motion has been filed with the Tribunal and the Tribunal has given it consideration, and insofar as it may be a plea to the jurisdiction of the Tribunal, it conflicts with Article 3 of the Charter and will not be entertained. Insofar as it may contain other arguments which may be open to the defendants, they may be heard at a later stage.

And now, in accordance with Article 24 of the Charter, which provides that, after the Indictment has been read in court, the defendants shall be called upon to plead guilty or not guilty, I now direct the defendants to plead either guilty or not guilty.

DR. DIX: May I speak to Your Lordship for just a moment?

THE PRESIDENT: You may not speak to me in support of the motion with which I have just dealt on behalf of the Tribunal. I have told you that so far as that motion is a plea to the jurisdiction of the Tribunal, it conflicts with Article 3 of the Charter and will not be entertained. Insofar as it contains or may contain arguments which may be open to the defendants, those arguments may be heard hereafter.

DR. DIX: I do not wish to speak on the subject of a motion. As speaker for the Defense I should like to broach a technical question and voice a question to this effect on behalf of the Defense. May I do so? The Defense Counsel were forbidden to talk to the defendants this morning. It is absolutely necessary that the Defense Counsel should be able to speak to the defendants before the session. It often happens that after the session one cannot reach one's client at night. It is quite possible that counsel may have prepared something overnight which he wishes to discuss with the defendant before the session. According to our experience it is always permissible for the Defense Counsel to speak to the defendant before the session. The question of conferring between Defense Counsel and clients during sessions could be dealt with at a later date.

At present I request, on behalf of the entire Defense, that we be allowed to confer with our clients in the courtroom, into which they usually are brought at a very early hour. Otherwise, we shall

not be in a position to conduct the defense in an efficient and appropriate manner.

THE PRESIDENT: I am afraid that you cannot consult with your clients in the courtroom except by written communication. When you are out of the courtroom, security regulations can be carried out and, so far as those security regulations go, you have full opportunity to consult with your clients. In the courtroom we must confine you to written communications to your clients. At the end of each day's sitting, you will have full opportunity to consult with them in private.

DR. DIX: I shall discuss this with my colleagues of the Defense and we should like if possible to return to this question.

DR. THOMA: May I have the floor?

THE PRESIDENT: Will you state your name please.

DR. THOMA: Dr. Ralph Thoma. I represent the Defendant Rosenberg. Yesterday my client gave me a statement as regards the question of guilt or innocence. I took this statement and promised him to talk with him about it. Neither last night nor this morning have I had an opportunity to talk with him; and, consequently, neither I nor my client are in a position to make a statement today as to whether he is guilty or not guilty. I therefore request that the proceedings be interrupted so that I may speak with my client.

THE PRESIDENT: Dr. Thoma, the Tribunal will be prepared to adjourn for 15 minutes in order that you may have an opportunity of consulting with your clients.

DR. THOMA: Thank you. I should like to make another statement. Some of my colleagues have just told me that they are in the same position as I, particularly Dr. Sauter . . .

THE PRESIDENT: I meant that all defendants' counsel should have an opportunity of consulting with their clients; but I would point out to the defendants' counsel that they have had several weeks' preparation for this Trial, and that they must have anticipated that the provisions of Article 24 would be followed. But now we will adjourn for 15 minutes in which all of you may consult with your clients.

DR. THOMA: May I say something further in that respect, Your Honor.

THE PRESIDENT: Yes.

DR. THOMA: The Defense asked whether the question of guilty or not guilty could only be answered with "yes", or "no" or whether a more extensive and longer statement could be made. We obtained information on this point only the day before yesterday.

We therefore have had no opportunity to confer at length with our clients on this matter.

THE PRESIDENT: One moment. The question will have to be answered in the words of Article 24 of the Charter, and those words are printed in italics: "The Tribunal shall ask each defendant whether he pleads guilty or not guilty." That is what they have got to do at that stage. Of course, the defendants will have a full opportunity themselves, if they are called as witnesses, and by their counsel, to make their defense fully at a later stage.

[A recess was taken.]

THE PRESIDENT: I will now call upon the defendants to plead guilty or not guilty to the charges against them. They will proceed in turn to a point in the dock opposite to the microphone.

Hermann Wilhelm Göring.

HERMANN WILHELM GÖRING: Before I answer the question of the Tribunal whether or not I am guilty . . .

THE PRESIDENT: I informed the Court that defendants were not entitled to make a statement. You must plead guilty or not guilty.

GÖRING: I declare myself in the sense of the Indictment not guilty.

THE PRESIDENT: Rudolf Hess.

RUDOLF HESS: No.

THE PRESIDENT: That will be entered as a plea of not guilty. [Laughter.]

THE PRESIDENT: If there is any disturbance in court, those who make it will have to leave the court.

Joachim von Ribbentrop.

JOACHIM VON RIBBENTROP: I declare myself in the sense of the Indictment not guilty.

THE PRESIDENT: Wilhelm Keitel.

WILHELM KEITEL: I declare myself not guilty.

THE PRESIDENT: In the absence of Ernst Kaltenbrunner, the Trial will proceed against him, but he will have an opportunity of pleading when he is sufficiently well to be brought back into court.

Alfred Rosenberg.

ALFRED ROSENBERG: I declare myself in the sense of the Indictment not guilty.

THE PRESIDENT: Hans Frank.

HANS FRANK: I declare myself not guilty.

THE PRESIDENT: Wilhelm Frick.

WILHELM FRICK: Not guilty.

THE PRESIDENT: Julius Streicher.

JULIUS STREICHER: Not guilty.

THE PRESIDENT: Walter Funk.

WALTER FUNK: I declare myself not guilty.

THE PRESIDENT: Hjalmar Schacht.

HJALMAR SCHACHT: I am not guilty in any respect.

THE PRESIDENT: Karl Dönitz.

KARL DÖNITZ: Not guilty.

THE PRESIDENT: Erich Raeder.

ERICH RAEDER: I declare myself not guilty.

THE PRESIDENT: Baldur von Schirach.

BALDUR VON SCHIRACH: I declare myself in the sense of the Indictment not guilty.

THE PRESIDENT: Fritz Sauckel.

FRITZ SAUCKEL: I declare myself in the sense of the Indictment, before God and the world and particularly before my people, not guilty.

THE PRESIDENT: Alfred Jodl.

ALFRED JODL: Not guilty. For what I have done or had to do, I have a pure conscience before God, before history and my people.

THE PRESIDENT: Franz von Papen.

FRANZ VON PAPEN: I declare myself in no way guilty.

THE PRESIDENT: Arthur Seyss-Inquart.

ARTHUR SEYSS-INQUART: I declare myself not guilty.

THE PRESIDENT: Albert Speer.

ALBERT SPEER: Not guilty.

THE PRESIDENT: Constantin von Neurath.

CONSTANTIN VON NEURATH: I answer the question in the negative.

THE PRESIDENT: Hans Fritzsche.

HANS FRITZSCHE: As regards this Indictment, not guilty.

[At this point Defendant Göring stood up in the prisoner's dock and attempted to address the Tribunal.]

THE PRESIDENT: You are not entitled to address the Tribunal except through your counsel, at the present time.

I will now call upon the Chief Prosecutor for the United States of America.

MR. JUSTICE JACKSON: May it please Your Honors:

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The

wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

This Tribunal, while it is novel and experimental, is not the product of abstract speculations nor is it created to vindicate legalistic theories. This inquest represents the practical effort of four of the most mighty of nations, with the support of 17 more, to utilize international law to meet the greatest menace of our times — aggressive war. The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched. It is a cause of that magnitude that the United Nations will lay before Your Honors.

In the prisoners' dock sit twenty-odd broken men. Reproached by the humiliation of those they have led almost as bitterly as by the desolation of those they have attacked, their personal capacity for evil is forever past. It is hard now to perceive in these men as captives the power by which as Nazi leaders they once dominated much of the world and terrified most of it. Merely as individuals their fate is of little consequence to the world.

What makes this inquest significant is that these prisoners represent sinister influences that will lurk in the world long after their bodies have returned to dust. We will show them to be living symbols of racial hatreds, of terrorism and violence, and of the arrogance and cruelty of power. They are symbols of fierce nationalisms and of militarism, of intrigue and war-making which have embroiled Europe generation after generation, crushing its manhood, destroying its homes, and impoverishing its life. They have so identified themselves with the philosophies they conceived and with the forces they directed that any tenderness to them is a victory and an encouragement to all the evils which are attached to their names. Civilization can afford no compromise with the social forces which would gain renewed strength if we deal ambiguously or indecisively with the men in whom those forces now precariously survive.

What these men stand for we will patiently and temperately disclose. We will give you undeniable proofs of incredible events. The catalog of crimes will omit nothing that could be conceived by a pathological pride, cruelty, and lust for power. These men created in Germany, under the "Führerprinzip", a National Socialist des-

potism equalled only by the dynasties of the ancient East. They took from the German people all those dignities and freedoms that we hold natural and inalienable rights in every human being. The people were compensated by inflaming and gratifying hatreds towards those who were marked as "scapegoats". Against their opponents, including Jews, Catholics, and free labor, the Nazis directed such a campaign of arrogance, brutality, and annihilation as the world has not witnessed since the pre-Christian ages. They excited the German ambition to be a "master race", which of course implies serfdom for others. They led their people on a mad gamble for domination. They diverted social energies and resources to the creation of what they thought to be an invincible war machine. They overran their neighbors. To sustain the "master race" in its war-making, they enslaved millions of human beings and brought them into Germany, where these hapless creatures now wander as "displaced persons". At length bestiality and bad faith reached such excess that they aroused the sleeping strength of imperiled Civilization. Its united efforts have ground the German war machine to fragments. But the struggle has left Europe a liberated yet prostrate land where a demoralized society struggles to survive. These are the fruits of the sinister forces that sit with these defendants in the prisoners' dock.

In justice to the nations and the men associated in this prosecution, I must remind you of certain difficulties which may leave their mark on this case. Never before in legal history has an effort been made to bring within the scope of a single litigation the developments of a decade, covering a whole continent, and involving a score of nations, countless individuals, and innumerable events. Despite the magnitude of the task, the world has demanded immediate action. This demand has had to be met, though perhaps at the cost of finished craftsmanship. In my country, established courts, following familiar procedures, applying well-thumbed precedents, and dealing with the legal consequences of local and limited events seldom commence a trial within a year of the event in litigation. Yet less than 8 months ago today the courtroom in which you sit was an enemy fortress in the hands of German SS troops. Less than 8 months ago nearly all our witnesses and documents were in enemy hands. The law had not been codified, no procedures had been established, no tribunal was in existence, no usable courthouse stood here, none of the hundreds of tons of official German documents had been examined, no prosecuting staff had been assembled, nearly all of the present defendants were at large, and the four prosecuting powers had not yet joined in common cause to try them. I should be the last to deny that the case

may well suffer from incomplete researches and quite likely will not be the example of professional work which any of the prosecuting nations would normally wish to sponsor. It is, however, a completely adequate case to the judgment we shall ask you to render, and its full development we shall be obliged to leave to historians.

Before I discuss particulars of evidence, some general considerations which may affect the credit of this trial in the eyes of the world should be candidly faced. There is a dramatic disparity between the circumstances of the accusers and of the accused that might discredit our work if we should falter, in even minor matters, in being fair and temperate.

Unfortunately, the nature of these crimes is such that both prosecution and judgment must be by victor nations over vanquished foes. The worldwide scope of the aggressions carried out by these men has left but few real neutrals. Either the victors must judge the vanquished or we must leave the defeated to judge themselves. After the first World War, we learned the futility of the latter course. The former high station of these defendants, the notoriety of their acts, and the adaptability of their conduct to provoke retaliation make it hard to distinguish between the demand for a just and measured retribution, and the unthinking cry for vengeance which arises from the anguish of war. It is our task, so far as humanly possible, to draw the line between the two. We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.

At the very outset, let us dispose of the contention that to put these men to trial is to do them an injustice entitling them to some special consideration. These defendants may be hard pressed but they are not ill used. Let us see what alternative they would have to being tried.

More than a majority of these prisoners surrendered to or were tracked down by the forces of the United States. Could they expect us to make American custody a shelter for our enemies against the just wrath of our Allies? Did we spend American lives to capture them only to save them from punishment? Under the principles of the Moscow Declaration, those suspected war criminals who are not to be tried internationally must be turned over to individual governments for trial at the scene of their outrages. Many less responsible and less culpable American-held prisoners have been and will continue to be turned over to other United Nations for local trial. If

these defendants should succeed, for any reason, in escaping the condemnation of this Tribunal, or if they obstruct or abort this trial, those who are American-held prisoners will be delivered up to our continental Allies. For these defendants, however, we have set up an International Tribunal and have undertaken the burden of participating in a complicated effort to give them fair and dispassionate hearings. That is the best-known protection to any man with a defense worthy of being heard.

If these men are the first war leaders of a defeated nation to be prosecuted in the name of the law, they are also the first to be given a chance to plead for their lives in the name of the law. Realistically, the Charter of this Tribunal, which gives them a hearing, is also the source of their only hope. It may be that these men of troubled conscience, whose only wish is that the world forget them, do not regard a trial as a favor. But they do have a fair opportunity to defend themselves—a favor which these men, when in power, rarely extended to their fellow countrymen. Despite the fact that public opinon already condemns their acts, we agree that here they must be given a presumption of innocence, and we accept the burden of proving criminal acts and the responsibility of these defendants for their commission.

When I say that we do not ask for convictions unless we prove crime, I do not mean mere technical or incidental transgression of international conventions. We charge guilt on planned and intended conduct that involves moral as well as legal wrong. And we do not mean conduct that is a natural and human, even if illegal, cutting of corners, such as many of us might well have committed had we been in the defendants' positions. It is not because they yielded to the normal frailties of human beings that we accuse them. It is their abnormal and inhuman conduct which brings them to this bar.

We will not ask you to convict these men on the testimony of their foes. There is no count in the Indictment that cannot be proved by books and records. The Germans were always meticulous record keepers, and these defendants had their share of the Teutonic passion for thoroughness in putting things on paper. Nor were they without vanity. They arranged frequently to be photographed in action. We will show you their own films. You will see their own conduct and hear their own voices as these defendants re-enact for you, from the screen, some of the events in the course of the conspiracy.

We would also make clear that we have no purpose to incriminate the whole German people. We know that the Nazi Party was not put in power by a majority of the German vote.

We know it came to power by an evil alliance between the most extreme of the Nazi revolutionists, the most unrestrained of the German reactionaries, and the most aggressive of the German militarists. If the German populace had willingly accepted the Nazi program, no Storm-troopers would have been needed in the early days of the Party and there would have been no need for concentration camps or the Gestapo, both of which institutions were inaugurated as soon as the Nazis gained control of the German State. Only after these lawless innovations proved successful at home were they taken abroad.

The German people should know by now that the people of the United States hold them in no fear, and in no hate. It is true that the Germans have taught us the horrors of modern warfare, but the ruin that lies from the Rhine to the Danube shows that we, like our Allies, have not been dull pupils. If we are not awed by German fortitude and proficiency in war, and if we are not persuaded of their political maturity, we do respect their skill in the arts of peace, their technical competence, and the sober, industrious, and self-disciplined character of the masses of the German people. In 1933 we saw the German people recovering prestige in the commercial, industrial, and artistic world after the set-back of the last war. We beheld their progress neither with envy nor malice. The Nazi regime interrupted this advance. The recoil of the Nazi aggression has left Germany in ruins. The Nazi readiness to pledge the German word without hesitation and to break it without shame has fastened upon German diplomacy a reputation for duplicity that will handicap it for years. Nazi arrogance has made the boast of the "master race" a taunt that will be thrown at Germans the world over for generations. The Nazi nightmare has given the German name a new and sinister significance throughout the world which will retard Germany a century. The German, no less than the non-German world, has accounts to settle with these defendants.

The fact of the war and the course of the war, which is the central theme of our case, is history. From September 1st, 1939, when the German armies crossed the Polish frontier, until September 1942, when they met epic resistance at Stalingrad, German arms seemed invincible. Denmark and Norway, the Netherlands and France, Belgium and Luxembourg, the Balkans and Africa, Poland and the Baltic States, and parts of Russia, all had been overrun and conquered by swift, powerful, well-aimed blows. That attack on the peace of the world is the crime against international society which brings into international cognizance crimes in its aid and preparation which otherwise might be only internal concerns.

It was aggressive war, which the nations of the world had renounced. It was war in violation of treaties, by which the peace of the world was sought to be safe-guarded.

This war did not just happen—it was planned and prepared for over a long period of time and with no small skill and cunning. The world has perhaps never seen such a concentration and stimulation of the energies of any people as that which enabled Germany 20 years after it was defeated, disarmed, and dismembered to come so near carrying out its plan to dominate Europe. Whatever else we may say of those who were the authors of this war, they did achieve a stupendous work in organization, and our first task is to examine the means by which these defendants and their fellow conspirators prepared and incited Germany to go to war.

In general, our case will disclose these defendants all uniting at some time with the Nazi Party in a plan which they well knew could be accomplished only by an outbreak of war in Europe. Their seizure of the German State, their subjugation of the German people, their terrorism and extermination of dissident elements, their planning and waging of war, their calculated and planned ruthlessness in the conduct of warfare, their deliberate and planned criminality toward conquered peoples,—all these are ends for which they acted in concert; and all these are phases of the conspiracy, a conspiracy which reached one goal only to set out for another and more ambitious one. We shall also trace for you the intricate web of organizations which these men formed and utilized to accomplish these ends. We will show how the entire structure of offices and officials was dedicated to the criminal purposes and committed to the use of the criminal methods planned by these defendants and their co-conspirators, many of whom war and suicide have put beyond reach.

It is my purpose to open the case, particularly under Count One of the Indictment, and to deal with the Common Plan or Conspiracy to achieve ends possible only by resort to Crimes against Peace, War Crimes, and Crimes against Humanity. My emphasis will not be on individual barbarities and perversions which may have occurred independently of any central plan. One of the dangers ever present is that this Trial may be protracted by details of particular wrongs and that we will become lost in a "wilderness of single instances". Nor will I now dwell on the activity of individual defendants except as it may contribute to exposition of the common plan.

The case as presented by the United States will be concerned with the brains and authority back of all the crimes. These de-

fendants were men of a station and rank which does not soil its own hands with blood. They were men who knew how to use lesser folk as tools. We want to reach the planners and designers, the inciters and leaders without whose evil architecture the world would not have been for so long scourged with the violence and lawlessness, and wracked with the agonies and convulsions, of this terrible war.

The Lawless Road to Power:

The chief instrumentality of cohesion in plan and action was the National Socialist German Workers Party, known as the Nazi Party. Some of the defendants were with it from the beginning. Others joined only after success seemed to have validated its lawlessness or power had invested it with immunity from the processes of the law. Adolf Hitler became its supreme leader or "Führer" in 1921.

On the 24th of February 1920, at Munich, it publicly had proclaimed its program (1708-PS). Some of its purposes would commend themselves to many good citizens, such as the demands for "profit-sharing in the great industries," "generous development of provision for old age," "creation and maintenance of a healthy middle class," "a land reform suitable to our national requirements," and "raising the standard of health." It also made a strong appeal to that sort of nationalism which in ourselves we call patriotism and in our rivals chauvinism. It demanded "equality of rights for the German people in its dealing with other nations, and the abolition of the peace treaties of Versailles and St. Germain." It demanded the "union of all Germans on the basis of the right of self-determination of peoples to form a Great Germany." It demanded "land and territory (colonies) for the enrichment of our people and the settlement of our surplus population." All of these, of course, were legitimate objectives if they were to be attained without resort to aggressive warfare.

The Nazi Party from its inception, however, contemplated war. It demanded the "abolition of mercenary troops and the formation of a national army." It proclaimed that:

> "In view of the enormous sacrifice of life and property demanded of a nation by every war, personal enrichment through war must be regarded as a crime against the nation. We demand, therefore, ruthless confiscation of all war profits."

I do not criticize this policy. Indeed, I wish it were universal. I merely wish to point out that in a time of peace, war was a preoccupation of the Party, and it started the work of making war less offensive to the masses of the people. With this it combined a program of physical training and sports for youth that became, as we shall see, the cloak for a secret program of military training.

The Nazi Party declaration also committed its members to an anti-Semitic program. It declared that no Jew or any person of non-German blood could be a member of the nation. Such persons were to be disfranchised, disqualified for office, subject to the alien laws, and entitled to nourishment only after the German population had first been provided for. All who had entered Germany after August 2, 1914 were to be required forthwith to depart, and all non-German immigration was to be prohibited.

The Party also avowed, even in those early days, an authoritarian and totalitarian program for Germany. It demanded creation of a strong central power with unconditional authority, nationalization of all businesses which had been "amalgamated," and a "reconstruction" of the national system of education which "must aim at teaching the pupil to understand the idea of the State (state sociology)." Its hostility to civil liberties and freedom of the press was distinctly announced in these words:

> "It must be forbidden to publish newspapers which do not conduce to the national welfare. We demand the legal prosecution of all tendencies in art or literature of a kind likely to disintegrate our life as a nation and the suppression of institutions which might militate against the above requirements."

The forecast of religious persecution was clothed in the language of religious liberty, for the Nazi program stated, "We demand liberty for all religious denominations in the State." But, it continues with the limitation, "so far as they are not a danger to it and do not militate against the morality and moral sense of the German race."

The Party program foreshadowed the campaign of terrorism. It announced, "We demand ruthless war upon those whose activities are injurious to the common interests", and it demanded that such offenses be punished with death.

It is significant that the leaders of this Party interpreted this program as a belligerent one, certain to precipitate conflict. The Party platform concluded, "The leaders of the Party swear to proceed regardless of consequences — if necessary, at the sacrifice of their lives—toward the fulfillment of the foregoing points." It is this Leadership Corps of the Party, not its entire membership, that stands accused before you as a criminal organization.

Let us now see how the leaders of the Party fulfilled their pledge to proceed regardless of consequences. Obviously, their foreign objectives, which were nothing less than to undo international treaties and to wrest territory from foreign control, as well as most of their internal program, could be accomplished only by

possession of the machinery of the German State. The first effort, accordingly, was to subvert the Weimar Republic by violent revolution. An abortive putsch at Munich in 1923 landed many of them in jail. A period of meditation which followed produced *Mein Kampf*, henceforth the source of law for the Party workers and a source of considerable revenue to its supreme leader. The Nazi plans for the violent overthrow of the feeble Republic then turned to plans for its capture.

No greater mistake could be made than to think of the Nazi Party in terms of the loose organizations which we of the western world call "political parties". In discipline, structure, and method the Nazi Party was not adapted to the democratic process of persuasion. It was an instrument of conspiracy and of coercion. The Party was not organized to take over power in the German State by winning support of a majority of the German people; it was organized to seize power in defiance of the will of the people.

The Nazi Party, under the "Führerprinzip," was bound by an iron discipline into a pyramid, with the Führer, Adolf Hitler, at the top and broadening into a numerous Leadership Corps, composed of overlords of a very extensive Party membership at the base. By no means all of those who may have supported the movement in one way or another were actual Party members. The membership took the Party oath which in effect amounted to an abdication of personal intelligence and moral responsibility. This was the oath: "I vow inviolable fidelity to Adolf Hitler; I vow absolute obedience to him and to the leaders he designates for me." The membership in daily practice followed its leaders with an idolatry and self-surrender more Oriental than Western.

We will not be obliged to guess as to the motives or goal of the Nazi Party. The immediate aim was to undermine the Weimar Republic. The order to all Party members to work to that end was given in a letter from Hitler of August 24, 1931 to Rosenberg, of which we will produce the original. Hitler wrote:

> "I am just reading in the *Völkischer Beobachter*, edition 235/236, page 1, an article entitled "Does Wirth Intend To Come over?" The tendency of the article is to prevent on our part a crumbling away from the present form of government. I myself am travelling all over Germany to achieve exactly the opposite. May I therefore ask that my own paper will not stab me in the back with tactically unwise articles...." (047-PS)

Captured film enables us to present the Defendant Alfred Rosenberg, who from the screen will himself tell you the story. The SA practiced violent interference with elections. We have the reports

of the SD describing in detail how its members later violated the secrecy of elections in order to identify those who opposed them. One of the reports makes this explanation:

> ".... The control was effected in the following way: some members of the election committee marked all the ballot papers with numbers. During the ballot itself, a voters' list was made up. The ballot-papers were handed out in numerical order, therefore it was possible afterwards with the aid of this list to find out the persons who cast 'No'-votes or invalid votes. One sample of these marked ballot-papers is enclosed. The marking was done on the back of the ballot-papers with skimmed milk...." (R-142)

The Party activity, in addition to all the familiar forms of political contest, took on the aspect of a rehearsal for warfare. It utilized a Party formation, "Die Sturmabteilungen", commonly known as the SA. This was a voluntary organization of youthful and fanatical Nazis trained for the use of violence under semi-military discipline. Its members began by acting as bodyguards for the Nazi leaders and rapidly expanded from defensive to offensive tactics. They became disciplined ruffians for the breaking up of opposition meetings and the terrorization of adversaries. They boasted that their task was to make the Nazi Party "master of the streets". The SA was the parent organization of a number of others. Its offspring include "Die Schutzstaffeln", commonly known as the SS, formed in 1925 and distinguished for the fanaticism and cruelty of its members; "Der Sicherheitsdienst", known as the SD; and "Die Geheime Staatspolizei", the Secret State Police, the infamous Gestapo formed in 1934 after Nazi accession to power.

A glance at a chart of the Party organization is enough to show how completely it differed from the political parties we know. It had its own source of law in the Führer and sub-Führer. It had its own courts and its own police. The conspirators set up a government within the Party to exercise outside the law every sanction that any legitimate state could exercise and many that it could not. Its chain of command was military, and its formations were martial in name as well as in function. They were composed of battalions set up to bear arms under military discipline, motorized corps, flying corps, and the infamous "Death Head Corps", which was not misnamed. The Party had its own secret police, its security units, its intelligence and espionage division, its raiding forces, and its youth forces. It established elaborate administrative mechanisms to identify and liquidate spies and informers, to manage concentration camps, to operate death vans, and to finance the whole movement. Through concentric circles of authority, the Nazi Party, as its leader-

ship later boasted, eventually organized and dominated every phase of German life—but not until they had waged a bitter internal struggle characterized by brutal criminality we charge here. In preparation for this phase of their struggle, they created a Party. police system. This became the pattern and the instrument of the police state, which was the first goal in their plan.

The Party formations, including the Leadership Corps of the Party, the SD, the SS, the SA, and the infamous Secret State Police, or Gestapo,—all these stand accused before you as criminal organizations; organizations which, as we will prove from their own documents, were recruited only from recklessly devoted Nazis, ready in conviction and temperament to do the most violent of deeds to advance the common program. They terrorized and silenced democratic opposition and were able at length to combine with political opportunists, militarists, industrialists, monarchists, and political reactionaries.

On January 30, 1933 Adolf Hitler became Chancellor of the German Republic. An evil combination, represented in the prisoners' dock by its most eminent survivors, had succeeded in possessing itself of the machinery of the German Government, a facade behind which they thenceforth would operate to make a reality of the war of conquest they so long had plotted. The conspiracy had passed into its second phase.

The Consolidation of Nazi Power:

We shall now consider the steps, which embraced the most hideous of Crimes against Humanity, to which the conspirators resorted in perfecting control of the German State and in preparing Germany for the aggressive war indispensable to their ends.

The Germans of the 1920's were a frustrated and baffled people as a result of defeat and the disintegration of their traditional government. The democratic elements, which were trying to govern Germany through the new and feeble machinery of the Weimar Republic, got inadequate support from the democratic forces of the rest of the world, including my country. It is not to be denied that Germany, when worldwide depression was added to her other problems, was faced with urgent and intricate pressures in her economic and political life which necessitated bold measures.

The internal measures by which a nation attempts to solve its problems are ordinarily of no concern to other nations. But the Nazi program from the first was recognized as a desperate program for a people still suffering the effects of an unsuccessful war. The Nazi policy embraced ends recognized as attainable only by a renewal and a more successful outcome of war, in Europe. The conspirators' answer to Germany's problems was nothing less than

to plot the regaining of territories lost in the First World War and the acquisition of other fertile lands of Central Europe by dispossessing or exterminating those who inhabited them. They also contemplated destroying or permanently weakening all other neighboring peoples so as to win virtual domination over Europe and probably of the world. The precise limits of their ambition we need not define for it was and is as illegal to wage aggressive war for small stakes as for large ones.

We find at this period two governments in Germany—the real and the ostensible. The forms of the German Republic were maintained for a time, and it was the outward and visible government. But the real authority in the State was outside and above the law and rested in the Leadership Corps of the Nazi Party.

On February 27, 1933, less than a month after Hitler became Chancellor, the Reichstag building was set on fire. The burning of this symbol of free parliamentary government was so providential for the Nazis that it was believed they staged the fire themselves. Certainly when we contemplate their known crimes, we cannot believe they would shrink from mere arson. It is not necessary, however, to resolve the controversy as to who set the fire. The significant point is in the use that was made of the fire and of the state of public mind it produced. The Nazis immediately accused the Communist Party of instigating and committing the crime, and turned every effort to portray this single act of arson as the beginning of a communist revolution. Then, taking advantage of the hysteria, the Nazis met this phantom revolution with a real one. In the following December the German Supreme Court with commendable courage and independence acquitted the accused Communists, but it was too late to influence the tragic course of events which the Nazi conspirators had set rushing forward.

Hitler, on the morning after the fire, obtained from the aged and ailing President Von Hindenburg a presidential decree suspending the extensive guarantees of individual liberty contained in the constitution of the Weimar Republic. The decree provided that:

> "Sections 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Thus, restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association, and violations of the privacy of postal, telegraphic, and telephonic communications, and warrants for house-searches, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed." (1390-PS)

The extent of the restriction on personal liberty under the decree of February 28, 1933 may be understood by reference to the rights under the Weimar constitution which were suspended:

"*Article 114.* The freedom of the person is inviolable. Curtailment or deprivation of personal freedom by a public authority is only permissible on a legal basis.

"Persons who have been deprived of their freedom must be informed at the latest on the following day by whose authority and for what reasons the deprivation of freedom was ordered; opportunity shall be afforded them without delay of submitting objections to their deprivation of freedom.

"*Article 115.* Every German's home is his sanctuary and is inviolable. Exceptions may only be made as provided by law.

"*Article 117.* The secrecy of letters and all postal, telegraphic, and telephone communications is inviolable. Exceptions are inadmissible except by Reich law.

"*Article 118.* Every German has the right, within the limits of the general laws, to express his opinions freely in speech, in writing, in print, in picture form, or in any other way. No conditions of work or employment may detract from this right and no disadvantage may accrue to him from any person for making use of this right....

"*Article 123.* All Germans have the right to assemble peacefully and unarmed without giving notice and without special permission.

"A Reich law may make previous notification obligatory for assemblies in the open air, and may prohibit them in case of immediate danger to the public safety.

"*Article 124.* All the Germans have the right to form associations or societies for purposes not contrary to criminal law. This right may not be curtailed by preventive measures. The same provisions apply to religious associations and societies.

"Every association may become incorporated (Erwerb der Rechtsfähigkeit) according to the provisions of the civil law. The right may not be refused to any association on the grounds that its aims are political, social-political, or religious.

"*Article 153.* Property is guaranteed by the Constitution. Its content and limits are defined by the laws.

"Expropriation can only take place for the public benefit and on a legal basis. Adequate compensation shall be granted, unless a Reich law orders otherwise. In the case of dispute concerning the amount of compensation, it shall be possible

to submit the matter to the ordinary civil courts, unless Reich laws determine otherwise. Compensation must be paid if the Reich expropriates property belonging to the Lands, Communes, or public utility associations.

"Property carries obligations. Its use shall also serve the common good." (2050-PS)

It must be said in fairness to Von Hindenburg that the constitution itself authorized him temporarily to suspend these fundamental rights "if the public safety and order in the German Reich are considerably disturbed or endangered." It must also be acknowledged that President Ebert previously had invoked this power.

But the National Socialist coup was made possible because the terms of the Hitler-Hindenburg decree departed from all previous ones in which the power of suspension had been invoked. Whenever Ebert had suspended constitutional guarantees of individual rights, his decree had expressly revived the Protective Custody Act adopted by the Reichstag in 1916 during the previous war. This act guaranteed a judicial hearing within 24 hours of arrest, gave a right to have counsel and to inspect all relevant records, provided for appeal, and authorized compensation from Treasury funds for erroneous arrests.

The Hitler-Hindenburg decree of February 28, 1933 contained no such safeguards. The omission may not have been noted by Von Hindenburg. Certainly he did not appreciate its effect. It left the Nazi police and party formations, already existing and functioning under Hitler, completely unrestrained and irresponsible. Secret arrest and indefinite detention, without charges, without evidence, without hearing, without counsel, became the method of inflicting inhuman punishment on any whom the Nazi police suspected or disliked. No court could issue an injunction, or writ of *habeas corpus,* or *certiorari.* The German people were in the hands of the police, the police were in the hands of the Nazi Party, and the Party was in the hands of a ring of evil men, of whom the defendants here before you are surviving and representative leaders.

The Nazi conspiracy, as we shall show, always contemplated not merely overcoming current opposition but exterminating elements which could not be reconciled with its philosophy of the state. It not only sought to establish the Nazi "new order" but to secure its sway, as Hitler predicted, "for a thousand years." Nazis were never in doubt or disagreement as to what these dissident elements were. They were concisely described by one of them, Colonel General Von Fritsch, on December 11, 1938 in these words:

"Shortly after the first war I came to the conclusion that we should have to be victorious in three battles if Germany were to become powerful again: 1. The battle against the working class — Hitler has won this. 2. Against the Catholic Church, perhaps better expressed against Ultramontanism. 3. Against the Jews." (1947-PS)

The warfare against these elements was continuous. The battle in Germany was but a practice skirmish for the worldwide drive against them. We have in point of geography and of time two groups of Crimes against Humanity — one within Germany before and during the war, the other in occupied territory during the war. But the two are not separated in Nazi planning. They are a continuous unfolding of the Nazi plan to exterminate peoples and institutions which might serve as a focus or instrument for overturning their "new world order" at any time. We consider these crimes against humanity in this address as manifestations of the one Nazi plan and discuss them according to General Von Fritsch's classification.

1. The Battle against the Working Class:

When Hitler came to power, there were in Germany three groups of trade unions. The General German Trade Union Confederation (ADGB) with 28 affiliated unions, and the General Independent Employees Confederation (AFA) with 13 federated unions together numbered more than 4,500,000 members. The Christian Trade Union had over 1,250,000 members.

The working people of Germany, like the working people of other nations, had little to gain personally by war. While labor is usually brought around to the support of the nation at war, labor by and large is a pacific, though by no means a pacifist force in the world. The working people of Germany had not forgotten in 1933 how heavy the yoke of the war lord can be. It was the workingmen who had joined the sailors and soldiers in the revolt of 1918 to end the first World War. The Nazis had neither forgiven nor forgotten. The Nazi program required that this part of the German population not only be stripped of power to resist diversion of its scanty comforts to armament, but also be wheedled or whipped into new and unheard of sacrifices as a part of the Nazi war preparation. Labor must be cowed, and that meant its organizations and means of cohesion and defense must be destroyed.

The purpose to regiment labor for the Nazi Party was avowed by Ley in a speech to workers on May 2, 1933 as follows:

"You may say what else do you want, you have the absolute power. True we have the power, but we do not have the whole people, we do not have you workers 100 per cent, and

it is you whom we want; we will not let you be until you stand with us in complete, genuine acknowledgment." (614-PS)

The first Nazi attack was upon the two larger unions. On April 21, 1933 an order not even in the name of the Government, but of the Nazi Party was issued by the conspirator Robert Ley as "Chief of Staff of the political organization of the NSDAP," applicable to the Trade Union Confederation and the Independent Employees Confederation. It directed seizure of their properties and arrest of their principal leaders. The Party order directed Party organs which we here denounce as criminal associations, the SA and SS "to be employed for the occupation of the trade union properties, and for the taking into custody of personalities who come into question." And it directed the taking into "protective custody" of all chairmen and district secretaries of such unions and branch directors of the labor bank. (392-PS)

These orders were carried out on May 2, 1933. All funds of the labor unions, including pension and benefit funds, were seized. Union leaders were sent to concentration camps. A few days later, on May 10, 1933, Hitler appointed Ley leader of the German Labor Front (Deutsche Arbeitsfront) which succeeded to the confiscated union funds. The German Labor Front, a Nazi controlled labor bureau, was set up under Ley to teach the Nazi philosophy to German workers and to weed out from industrial employment all who were backward in their lessons. (1940-PS) "Factory troops" were organized as an "ideological shock squad within the factory" (1817-PS). The Party order provided that "outside of the German Labor Front, no other organization (whether of workers or of employees) is to exist." On June 24, 1933 the remaining Christian Trade Unions were seized, pursuant to an order of the Nazi Party signed by Ley.

On May 19, 1933, this time by a government decree, it was provided that "trustees" of labor appointed by Hitler, should regulate the conditions of all labor contracts, replacing the former process of collective bargaining (405-PS). On November 30, 1934 a decree "regulating national labor" introduced the Führer Principle into industrial relations. It provided that the owners of enterprises should be the "Führer" and the workers should be the followers. The "enterprise-Führer" should "make decisions for employees and laborers in all matters concerning the enterprise" (1861-PS). It was by such bait that the great German industrialists were induced to support the Nazi cause, to their own ultimate ruin.

Not only did the Nazis dominate and regiment German labor, but they forced the youth into the ranks of the laboring people

they had thus led into chains. Under a compulsory labor service decree on 26 June 1935 young men and women between the ages of 18 and 25 were conscripted for labor (1654-PS). Thus was the purpose to subjugate German labor accomplished. In the words of Ley, this accomplishment consisted "in eliminating the association character of the trade union and employees' associations, and in its place we have substituted the conception 'soldiers of work'." The productive manpower of the German nation was in Nazi control. By these steps the defendants won the battle to liquidate labor unions as potential opposition and were enabled to impose upon the working class the burdens of preparing for aggressive warfare.

Robert Ley, the field marshal of the battle against labor, answered our Indictment with suicide. Apparently he knew no better answer.

2. The Battle against the Churches:

The Nazi Party always was predominantly anti-Christian in its ideology. But we who believe in freedom of conscience and of religion base no charge of criminality on anybody's ideology. It is not because the Nazi themselves were irreligious or pagan, but because they persecuted others of the Christian faith that they become guilty of crime, and it is because the persecution was a step in the preparation for aggressive warfare that the offense becomes one of international consequence. To remove every moderating influence among the German people and to put its population on a total war footing, the conspirators devised and carried out a systematic and relentless repression of all Christian sects and churches.

We will ask you to convict the Nazis on their own evidence. Martin Bormann, in June 1941, issued a secret decree on the relation of Christianity and National Socialism. The decree provided:

> "For the first time in German history the Führer consciously and completely has the leadership of the people in his own hand. With the Party, its components, and attached units the Führer has created for himself and thereby the German Reich leadership an instrument which makes him independent of the church. All influences which might impair or damage the leadership of the people exercised by the Führer with help of the NSDAP, must be eliminated. More and more the people must be separated from the churches and their organs, the pastors. Of course, the churches must and will, seen from their viewpoint, defend themselves against this loss of power. But never again must an influence on leadership of the people be yielded to the

churches. This (influence) must be broken completely and finally.

"Only the Reich Government and by its direction the Party, its components, and attached units have a right to leadership of the people. Just as the deleterious influences of astrologers, seers, and other fakers are eliminated and suppressed by the State, so must the possibility of church influence also be totally removed. Not until this has happened, does the State leadership have influence on the individual citizens. Not until then are people and Reich secure in their existence for all the future." (D-75)

And how the Party had been securing the Reich from Christian influence, will be proved by such items as this teletype from the Gestapo, Berlin, to the Gestapo, Nuremberg, on July 24, 1938. Let us hear their own account of events in Rottenburg.

"The Party on 23 July 1939 from 2100 on carried out the third demonstration against Bishop Sproll. Participants about 2500-3000 were brought in from outside by bus, etc. The Rottenburg populace again did not participate in the demonstration. This town took rather a hostile attitude to the demonstrations. The action got completely out of hand of the Party member responsible for it. The demonstrators stormed the palace, beat in the gates and doors. About 150 to 200 people forced their way into the palace, searched the rooms, threw files out of the windows and rummaged through the beds in the rooms of the palace. One bed was ignited. Before the fire got to the other objects of equipment in the rooms and the palace, the flaming bed could be thrown from the window and the fire extinguished. The Bishop was with Archbishop Groeber of Freiburg and the ladies and gentlemen of his menage in the chapel at prayer. About 25 to 30 people pressed into this chapel and molested those present. Bishop Groeber was taken for Bishop Sproll. He was grabbed by the robe and dragged back and forth. Finally the intruders realized that Bishop Groeber is not the one they are seeking. They could then be persuaded to leave the building. After the evacuation of the palace by the demonstrators I had an interview with Archbishop Groeber who left Rottenburg in the night. Groeber wants to turn to the Führer and Reich Minister of the Interior, Dr. Frick, anew. On the course of the action, the damage done as well as the homage of the Rottenburg populace beginning today for the Bishop I shall immediately hand in a full

report, after I am in the act of suppressing counter mass meetings....

"In case the Führer has instructions to give in this matter, I request that these be transmitted most quickly...." (848-PS)

Later, Defendant Rosenberg wrote to Bormann reviewing the proposal of Kerrl as Church Minister to place the Protestant Church under State tutelage and proclaim Hitler its supreme head. Rosenberg was opposed, hinting that nazism was to suppress the Christian Church completely after the war (See also 098-PS).

The persecution of all pacifist and dissenting sects, such as Jehovah's Witnesses and the Pentecostal Association, was peculiarly relentless and cruel. The policy toward the Evangelical Churches, however, was to use their influence for the Nazis' own purposes. In September 1933 Mueller was appointed the Führer's representative with power to deal with the "affairs of the Evangelical Church" in its relations to the State. Eventually, steps were taken to create a Reich Bishop vested with power to control this Church. A long conflict followed, Pastor Niemöller was sent to concentration camp, and extended interference with the internal discipline and administration of the churches occurred.

A most intense drive was directed against the Roman Catholic Church. After a strategic concordat with the Holy See, signed in July 1933 in Rome, which never was observed by the Nazi Party, a long and persistent persecution of the Catholic Church, its priesthood, and its members, was carried out. Church schools and educational institutions were suppressed or subjected to requirements of Nazi teaching inconsistent with the Christian faith. The property of the Church was confiscated and inspired vandalism directed against Church property was left unpunished. Religious instruction was impeded and the exercise of religion made difficult. Priests and bishops were laid upon, riots were stimulated to harass them, and many were sent to concentration camps.

After occupation of foreign soil, these persecutions went on with greater vigor than ever. We will present to you from the files of the Vatican the earnest protests made by the Vatican to Ribbentrop summarizing the persecutions to which the priesthood and the Church had been subjected in this twentieth century under the Nazi regime. Ribbentrop never answered them. He could not deny. He dared not justify.

I now come to "Crimes against the Jews."

THE PRESIDENT: We shall now take our noon recess.

[A recess was taken until 1400 hours.]

Afternoon Session

THE PRESIDENT: The Tribunal will adjourn for 15 minutes at half past 3 and will then continue until half past 4.

MR. JUSTICE JACKSON: I was about to take up the "Crimes Committed against the Jews."

3. Crimes against the Jews:

The most savage and numerous crimes planned and committed by the Nazis were those against the Jews. Those in Germany in 1933 numbered about 500,000. In the aggregate, they had made for themselves positions which excited envy, and had accumulated properties which excited the avarice of the Nazis. They were few enough to be helpless and numerous enough to be held up as a menace.

Let there be no misunderstanding about the charge of persecuting Jews. What we charge against these defendants is not those arrogances and pretensions which frequently accompany the intermingling of different peoples and which are likely, despite the honest efforts of government, to produce regrettable crimes and convulsions. It is my purpose to show a plan and design, to which all Nazis were fanatically committed, to annihilate all Jewish people. These crimes were organized and promoted by the Party leadership, executed and protected by the Nazi officials, as we shall convince you by written orders of the Secret State Police itself.

The persecution of the Jews was a continuous and deliberate policy. It was a policy directed against other nations as well as against the Jews themselves. Anti-Semitism was promoted to divide and embitter the democratic peoples and to soften their resistance to the Nazi aggression. As Robert Ley declared in *Der Angriff* on 14 May 1944: "The second German secret weapon is Anti-Semitism because if it is constantly pursued by Germany, it will become a universal problem which all nations will be forced to consider."

Anti-Semitism also has been aptly credited with being a "spearhead of terror." The ghetto was the laboratory for testing repressive measures. Jewish property was the first to be expropriated, but the custom grew and included similar measures against anti-Nazi Germans, Poles, Czechs, Frenchmen, and Belgians. Extermination of the Jews enabled the Nazis to bring a practiced hand to similar measures against Poles, Serbs, and Greeks. The plight of the Jew was a constant threat to opposition or discontent among other elements of Europe's population — pacifists, conservatives, Communists, Catholics, Protestants, Socialists. It was in fact, a threat to every dissenting opinion and to every non-Nazi's life.

The persecution policy against the Jews commenced with non-violent measures, such as disfranchisement and discriminations against their religion, and the placing of impediments in the way of success in economic life. It moved rapidly to organized mass violence against them, physical isolation in ghettos, deportation, forced labor, mass starvation, and extermination. The Government, the Party formations indicted before you as criminal organizations, the Secret State Police, the Army, private and semi-public associations, and "spontaneous" mobs that were carefully inspired from official sources, were all agencies that were concerned in this persecution. Nor was it directed against individual Jews for personal bad citizenship or unpopularity. The avowed purpose was the destruction of the Jewish people as a whole, as an end in itself, as a measure of preparation for war, and as a discipline of conquered peoples.

The conspiracy or common plan to exterminate the Jew was so methodically and thoroughly pursued, that despite the German defeat and Nazi prostration this Nazi aim largely has succeeded. Only remnants of the European Jewish population remain in Germany, in the countries which Germany occupied, and in those which were her satellites or collaborators. Of the 9,600,000 Jews who lived in Nazi-dominated Europe, 60 percent are authoritatively estimated to have perished. Five million seven hundred thousand Jews are missing from the countries in which they formerly lived, and over 4,500,000 cannot be accounted for by the normal death rate nor by immigration; nor are they included among displaced persons. History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated cruelty.

You will have difficulty, as I have, to look into the faces of these defendants and believe that in this twentieth century human beings could inflict such sufferings as will be proved here on their own countrymen as well as upon their so-called "inferior" enemies. Particular crimes, and the responsibility of defendants for them, are to be dealt with by the Soviet Government's counsel, when committed in the East, and by counsel for the Republic of France when committed in the West. I advert to them only to show their magnitude as evidence of a purpose and a knowledge common to all defendants, of an official plan rather than of a capricious policy of some individual commander, and to show such a continuity of Jewish persecution from the rise of the Nazi conspiracy to its collapse as forbids us to believe that any person could be identified with any part of Nazi action without approving this most conspicuous item in their program.

The Indictment itself recites many evidences of the anti-Semitic persecutions. The Defendant Streicher led the Nazis in anti-Semitic

bitterness and extremism. In an article appearing in *Der Stürmer* on 19 March 1942 he complained that Christian teachings have stood in the way of "racial solution of the Jewish question in Europe", and quoted enthuslastically as the twentieth century solution the Führer's proclamation of February 24, 1942 that "the Jew will be exterminated." And on November 4, 1943 Streicher declared in *Der Stürmer* that the Jews "have disappeared from Europe and that the Jewish 'Reservoir of the East' from which the Jewish plague has for centuries beset the people of Europe, has ceased to exist." Streicher now has the effrontery to tell us he is "only a Zionist" — he says he wants only to return the Jews to Palestine. But on May 7, 1942 his newspaper, *Der Stürmer,* had this to say:

> "It is also not only a European problem! *The Jewish question is a world question!* Not only is Germany not safe in the face of the Jews as long as one Jew lives in Europe, but also the Jewish question is hardly solved in Europe so long as Jews live in the rest of the world."

And the Defendant Hans Frank, a lawyer by profession, I say with shame, summarized in his diary in 1944 the Nazi policy thus: "The Jews are a race which has to be eliminated; whenever we catch one, it is his end" (2233-PS, 4 March 1944, P. 26). And earlier, speaking of his function as Governor General of Poland, he confided to his diary this sentiment: "Of course I cannot eliminate all lice and Jews in only a year's time" (2233-PS, Vol. IV, 1940, P. 1158). I could multiply endlessly this kind of Nazi ranting but I will leave it to the evidence and turn to the fruit of this perverted thinking.

The most serious of the actions against Jews were outside of any law, but the law itself was employed to some extent. There were the infamous Nuremberg decrees of September 15, 1935 *(Reichsgesetzblatt* 1935, Part. I, P. 1146). The Jews were segregated into ghettos and put into forced labor; they were expelled from their professions; their property was expropriated; all cultural life, the press, the theater, and schools were prohibited them; and the SD was made responsible for them (212-PS, 069-PS). This was an ominous guardianship, as the following order for "The Handling of the Jewish Question" shows:

> "The competency of the Chief of the Security Police and Security Service, who is charged with the mission of solving the European Jewish question, extends even to the Occupied Eastern Provinces . . . .
>
> "An eventual act by the civilian population against the Jews is not to be prevented as long as this is compatible with the maintenance of order and security in the rear of the fighting troops . . . .

"The first main goal of the German measures must be strict segregation of Jewry from the rest of the population. In the execution of this, first of all is the seizing of the Jewish populace by the introduction of a registration order and similar appropriate measures . . . .

"Then immediately, the wearing of the recognition sign consisting of a yellow Jewish star is to be brought about and all rights of freedom for Jews are to be withdrawn. They are to be placed in ghettos and at the same time are to be separated according to sexes. The presence of many more or less closed Jewish settlements in White Ruthenia and in the Ukraine makes this mission easier. Moreover, places are to be chosen which make possible the full use of the Jewish manpower in case labor needs are present . . . .

"The entire Jewish property is to be seized and confiscated with exception of that which is necessary for a bare existence. As far as the economical situation permits, the power of disposal of their property is to be taken from the Jews as soon as possible through orders and other measures given by the commissariat, so that the moving of property will quickly cease.

"Any cultural activity will be completely forbidden, to the Jew. This includes the outlawing of the Jewish press, the Jewish theaters, and schools.

"The slaughtering of animals according to Jewish rites is also to be prohibited . . . . " (212-PS)

The anti-Jewish campaign became furious in Germany following the assassination in Paris of the German Legation Councillor Von Rath. Heydrich, Gestapo head, sent a teletype to all Gestapo and SD offices with directions for handling "spontaneous" uprising anticipated for the nights of November 9 and 10, 1938 so as to aid in destruction of Jewish-owned property and protect only that of Germans. No more cynical document ever came into evidence. Then there is a report by an SS brigade leader, Dr. Stahlecker, to Himmler, which recites that:

". . . Similarly, native anti-Semitic forces were induced to start pogroms against Jews during the first hours after capture, though this inducement proved to be very difficult. Following out orders, the Security Police was determined to solve the Jewish question with all possible means and most decisively. But it was desirable that the Security Police should not put in an immediate appearance, at least in the beginning, since the extraordinarily harsh measures were apt to stir even German circles. It had to be shown to the world that the native

population itself took the first action by way of natural reaction against the suppression by Jews during several decades and against the terror exercised by the Communists during the preceding period . . . ."

". . . In view of the extension of the area of operations and the great number of duties which had to be performed by the Security Police, it was intended from the very beginning to obtain the co-operation of the reliable population for the fight against vermin—that is mainly the Jews and Communists. Beyond our directing of the first spontaneous actions of self-cleansing, which will be reported elsewhere, care had to be taken that reliable people should be put to the cleansing job and that they were appointed auxiliary members of the Security Police . . . ."

". . . Kovno. To our surprise it was not easy at first to set in motion an extensive pogrom against Jews. Klimatis, the leader of the partisan unit, mentioned above, who was used for this purpose primarily, succeeded in starting a pogrom on the basis of advice given to him by a small advanced detachment acting in Kovno, and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 June the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means and burned down a Jewish dwelling district consisting of about 60 houses. During the following nights about 2,300 Jews were made harmless in a similar way. In other parts of Lithuania similar actions followed the example of Kovno, though smaller and extending to the Communists who had been left behind.

"These self-cleansing actions went smoothly because the Army authorities who had been informed showed understanding for this procedure. From the beginning it was obvious that only the first days after the occupation would offer the opportunity for carrying out pogroms. After the disarmament of the partisans the self-cleansing actions ceased necessarily.

"It proved much more difficult to set in motion similar cleansing actions in Latvia . . . ." (L-180)

Of course, it is self-evident that these "uprisings" were managed by the Government and the Nazi Party. If we were in doubt, we could resort to Streicher's memorandum of April 14, 1939 which says:

"The anti-Jewish action of November 1938 did not arise spontaneously from the people . . . . Part of the Party formation

have been charged with the execution of the anti-Jewish action." (406-PS)

Jews as a whole were fined a billion Reichsmarks. They were excluded from all businesses, and claims against insurance companies for their burned properties were confiscated, all by decree of the Defendant Göring. *(Reichsgesetzblatt,* 1938, Part I, Pp. 1579-82)

Synagogues were the objects of a special vengeance. On November 10, 1938 the following order was given:

"By order of the Group Commander:

All Jewish synagogues in the area of Brigade 50 have to be blown up or set afire.... The operation will be carried out in civilian clothing .... Execution of the order will be reported . . . ." (1721-PS)

Some 40 teletype messages from various police headquarters will tell the fury with which all Jews were pursued in Germany on those awful November nights. The SS troops were turned loose and the Gestapo supervised. Jewish-owned property was authorized to be destroyed. The Gestapo ordered twenty to thirty thousand "well-to-do-Jews" to be arrested. Concentration camps were to receive them. Healthy Jews, fit for labor, were to be taken. (3051-PS)

As the German frontiers were expanded by war, so the campaign against the Jews expanded. The Nazi plan never was limited to extermination in Germany; always it contemplated extinguishing the Jew in Europe and often in the world. In the West, the Jews were killed and their property taken over. But the campaign achieved its zenith of savagery in the East. The eastern Jew has suffered as no people ever suffered. Their sufferings were carefully reported to the Nazi authorities to show faithful adherence to the Nazi design. I shall refer only to enough of the evidence of these to show the extent of the Nazi design for killing Jews.

If I should recite these horrors in words of my own, you would think me intemperate and unreliable. Fortunately, we need not take the word of any witness but the Germans themselves. I invite you now to look at a few of the vast number of captured German orders and reports that will be offered in evidence, to see what a Nazi invasion meant. We will present such evidence as the report of "Einsatzgruppe (Action Group) A" of October 15, 1941 which boasts that in overrunning the Baltic States, "Native anti-Semitic forces were induced to start pogroms against the Jews during the first hours after occupation . . . ." The report continues:

"From the beginning it was to be expected that the Jewish problem in the East could not be solved by pogroms alone. In accordance with the basic orders received, however, the

cleansing activities of the Security Police had to aim at a complete annihilation of the Jews. Special detachments reinforced by selected units—in Lithuania partisan detachments, in Latvia units of the Latvian auxiliary police—therefore performed extensive executions both in the towns and in rural areas. The actions of the execution detachments were performed smoothly."

"The sum total of the Jews liquidated in Lithuania amounts to 71,105. During the pogroms in Kovno 3,800 Jews were eliminated, in the smaller towns about 1,200 Jews."

"In Latvia, up to now a total of 30,000 Jews were executed. Five hundred were eliminated by pogroms in Riga." (L-180)

This is a captured report from the Commissioner of Sluzk on October 30, 1941 which describes the scene in more detail. It says:

" ... The first lieutenant explained that the police battalion had received the assignment to effect the liquidation of all Jews here in the town of Sluzk, within two days .... Then I requested him to postpone the action one day. However, he rejected this with the remark that he had to carry out this action everywhere and in all towns and that only two days were allotted for Sluzk. Within these two days, the town of Sluzk had to be cleared of Jews by all means.... All Jews without exception were taken out of the factories and shops and deported in spite of our agreement. It is true that part of the Jews was moved by way of the ghetto where many of them were processed and still segregated by me, but a large part was loaded directly on trucks and liquidated without further delay outside of the town .... For the rest, as regards the execution of the action, I must point out to my deepest regret that the latter bordered already on sadism. The town itself offered a picture of horror during the action. With indescribable brutality on the part of both the German police officers and particularly the Lithuanian partisans, the Jewish people, but also among them White Ruthenians, were taken out of their dwellings and herded together. Everywhere in the town shots were to be heard and in different streets the corpses of shot Jews accumulated. The White Ruthenians were in greatest distress to free themselves from the encirclement. Regardless of the fact that the Jewish people, among whom were also tradesmen, were mistreated in a terribly barbarous way in the face of the White Ruthenian people, the White Ruthenians themselves were also worked over with rubber clubs and rifle butts. There was no

question of an action against the Jews any more. It rather looked like a revolution . . . ."

There are reports which merely tabulate the numbers slaughtered. An example is an account of the work of Einsatzgruppen of SIPO and SD in the East, which relates that:

In Estonia, all Jews were arrested immediately upon the arrival of the Wehrmacht. Jewish men and women above the age of 16 and capable of work were drafted for forced labor. Jews were subjected to all sorts of restrictions and all Jewish property was confiscated. All Jewish males above the age of 16 were executed, with the exception of doctors and elders. Only 500 of an original 4,500 Jews remained. Thirty-seven thousand, one hundred eighty persons have been liquidated by the SIPO and SD in White Ruthenia during October. In one town, 337 Jewish women were executed for demonstrating a 'provocative attitude.' In another, 380 Jews were shot for spreading vicious propaganda.

And so the report continues, listing town after town, where hundreds of Jews were murdered:

In Vitebsk 3,000 Jews were liquidated because of the danger of epidemics. In Kiev 33,771 Jews were executed on September 29 and 30 in retaliation for some fires which were set off there. In Shitomir 3,145 Jews 'had to be shot' because, judging from experience they had to be considered as the carriers of Bolshevik propaganda. In Cherson 410 Jews were executed in reprisal against acts of sabotage. In the territory east of the Dnieper, the Jewish problem was 'solved' by the liquidation of 4,891 Jews and by putting the remainder into labor battalions of up to 1,000 persons. (R-102)

Other accounts tell not of the slaughter so much as of the depths of degradation to which the tormentors stooped. For example, we will show the report made to Defendant Rosenberg about the army and the SS in the area under Rosenberg's jurisdiction, which recited the following:

"Details: In presence of SS man, a Jewish dentist has to break all gold teeth and fillings out of mouth of German and Russian Jews *before* they are executed."

Men, women and children are locked into barns and burned alive.

Peasants, women and children are shot on the pretext that they are suspected of belonging to bands. (R-135)

We of the Western World heard of gas wagons in which Jews and political opponents were asphyxiated. We could not believe it. But here we have the report of May 16, 1942 from the German SS Officer Becker to his supervisor in Berlin which tells this story:

Gas vans in C group can be driven to execution spot, which is generally stationed 10 to 15 kms. from main road, only in dry weather. Since those to be executed become frantic if conducted to this place, such vans become immobilized in wet weather.

Gas vans in D group were camouflaged as cabin trailers, but vehicles well known to authorities and civilian population which calls them 'death vans'.

Writer of letter (Becker) ordered all men to keep as far away as possible during gassing. Unloading van has 'atrocious spiritual and physical effect' on men and they should be ordered not to participate in such work. (501-PS)

I shall not dwell on this subject longer than to quote one more sickening document which evidences the planned and systematic character of the Jewish persecutions. I hold a report written with Teutonic devotion to detail, illustrated with photographs to authenticate its almost incredible text, and beautifully bound in leather with the loving care bestowed on a proud work. It is the original report of the SS Brigadier General Stroop in charge of the destruction of the Warsaw Ghetto, and its title page carries the inscription, "The Jewish ghetto in Warsaw no longer exists." It is characteristic that one of the captions explains that the photograph concerned shows the driving out of Jewish "bandits"; those whom the photograph shows being driven out are almost entirely women and little children. It contains a day-by-day account of the killings mainly carried out by the SS organization, too long to relate, but let me quote General Stroop's summary:

> "The resistance put up by the Jews and bandits could only be suppressed by energetic actions of our troops day and night. *The Reichsführer SS ordered, therefore, on 23 April 1943, the cleaning out of the ghetto with utter ruthlessness and merciless tenacity.* I, therefore, decided to destroy and burn down the entire ghetto without regard to the armament factories. These factories were systematically dismantled and then burned. Jews usually left their hideouts, but frequently remained in the burning buildings and jumped out of the windows only when the heat became unbearable. They then tried to crawl with broken bones across the street into buildings which were not afire. Sometimes they changed their hideouts during the night into the ruins of burned buildings. Life in the sewers was not pleasant after the first week. Many times we could hear loud voices in the sewers. SS men or policemen climbed bravely through the manholes to capture these Jews. Sometimes they stumbled over Jewish corpses; sometimes they were shot at. Tear gas bombs were thrown

into the manholes and the Jews driven out of the sewers and captured. Countless numbers of Jews were liquidated in sewers and bunkers through blasting. The longer the resistance continued the tougher became the members of the Waffen SS, Police and Wehrmacht, who always discharged their duties in an exemplary manner. Frequently Jews who tried to replenish their food supplies during the night or to communicate with neighboring groups were exterminated.

"This action eliminated," says the SS commander, "a proved total of 56,065. To that, we have to add the number killed through blasting, fire, etc., which cannot be counted." (1061-PS)

We charge that all atrocities against Jews were the manifestation and culmination of the Nazi plan to which every defendant here was a party. I know very well that some of these men did take steps to spare some particular Jew for some personal reason from the horrors that awaited the unrescued Jew. Some protested that particular atrocities were excessive, and discredited the general policy. While a few defendants may show efforts to make specific exceptions to the policy of Jewish extermination, I have found no instance in which any defendant opposed the policy itself or sought to revoke or even modify it.

Determination to destroy the Jews was a binding force which at all times cemented the elements of this conspiracy. On many internal policies there were differences among the defendants. But there is not one of them who has not echoed the rallying cry of nazism: "Deutschland erwache, Juda verrecke!" (Germany awake, Jewry perish!).

Terrorism and Preparation for War:

How a government treats its own inhabitants generally is thought to be no concern of other governments or of international society. Certainly few oppressions or cruelties would warrant the intervention of foreign powers. But the German mistreatment of Germans is now known to pass in magnitude and savagery any limits of what is tolerable by modern civilization. Other nations, by silence, would take a consenting part in such crimes. These Nazi persecutions, moreover, take character as international crimes because of the purpose for which they were undertaken.

The purpose, as we have seen, of getting rid of the influence of free labor, the churches, and the Jews was to clear their obstruction to the precipitation of aggressive war. If aggressive warfare in violation of treaty obligation is a matter of international cognizance the preparations for it must also be of concern to the international community. Terrorism was the chief instrument for securing the

cohesion of the German people in war purposes. Moreover, these cruelties in Germany served as atrocity practice to discipline the membership of the criminal organization to follow the pattern later in occupied countries.

Through the police formations that are before you accused as criminal organizations, the Nazi Party leaders, aided at some point in their basic and notorious purpose by each of the individual defendants, instituted a reign of terror. These espionage and police organizations were utilized to hunt down every form of opposition and to penalize every nonconformity. These organizations early founded and administered concentration camps—Buchenwald in 1933, Dachau in 1934. But these notorious names were not alone. Concentration camps came to dot the German map and to number scores. At first they met with resistance from some Germans. We have a captured letter from Minister of Justice Gürtner to Hitler which is revealing. A Gestapo official had been prosecuted for crimes committed in the camp at Hohnstein, and the Nazi Governor of Saxony had promptly asked that the proceeding be quashed. The Minister of Justice in June of 1935 protested because, as he said:

> "In this camp unusually grave mistreatments of prisoners have occurred at least since summer 1933. The prisoners not only were beaten with whips without cause, similarly as in the Concentration Camp Bredow near Stettin till they lost consciousness, but they were also tortured in other manners, e.g. with the help of a dripping apparatus constructed exclusively for this purpose, under which prisoners had to stand until they were suffering from serious purulent wounds of the scalp . . . ." (787-PS)

I shall not take time to detail the ghastly proceedings in these concentration camps. Beatings, starvings, tortures, and killings were routine — so routine that the tormenters became blasé and careless. We have a report of discovery that in Plötzensee one night, 186 persons were executed while there were orders for only 180. Another report describes how the family of one victim received two urns of ashes by mistake.

Inmates were compelled to execute each other. In 1942 they were paid five Reichsmarks per execution, but on June 27, 1942 SS General Glücks ordered commandants of all concentration camps to reduce this honorarium to three cigarettes. In 1943 the Reich leader of the SS and Chief of German Police ordered the corporal punishments on Russian women to be applied by Polish women and vice versa, but the price was not frozen. He said that as reward, a few cigarettes was authorized. Under the Nazis, human life had been progressively devalued, until it finally became

worth less than a handful of tobacco—ersatz tobacco. There were, however, some traces of the milk of human kindness. On August 11, 1942 an order went from Himmler to the commanders of 14 concentration camps that only German prisoners are allowed to beat other German prisoners (2189-PS).

Mystery and suspense was added to cruelty in order to spread torture from the inmate to his family and friends. Men and women disappeared from their homes or business or from the streets, and no word came of them. The omission of notice was not due to overworked staff; it was due to policy. The Chief of the SD and SIPO reported that in accordance with orders from the Führer anxiety should be created in the minds of the family of the arrested person. (668-PS) Deportations and secret arrests were labeled, with a Nazi wit which seems a little ghoulish, "Nacht und Nebel" (Night and Fog) (L-90, 833-PS). One of the many orders for these actions gave this explanation:

> "The decree carries a basic innovation. The Führer and Commander-in-Chief of the Armed Forces commands that crimes of the specified sort committed by civilians of the occupied territories are to be punished by the pertinent courts-martial in the occupied territories *only* when (a) the sentence calls for the death penalty, and (b) the sentence is pronounced within eight days after the arrest.
>
> "Only when both conditions are met does the Führer and Commander-in-Chief of the Armed Forces hope for the desired deterrent effect from the conduct of punitive proceedings in the occupied territories.
>
> "In other cases, in the future, the accused are to be secretly brought to Germany, and the further conduct of the trial carried on here. The deterrent effect of these measures lies (a) in allowing the disappearance of the accused without a trace, (b) therein that no information whatsoever may be given about their whereabouts and their fate." (833-PS)

To clumsy cruelty, scientific skill was added. "Undesirables" were exterminated by injection of drugs into the bloodstream, by asphyxiation in gas chambers. They were shot with poison bullets, to study the effects. (L-103)

Then, to cruel experiments the Nazi added obscene ones. These were not the work of underling-degenerates but of master-minds high in the Nazi conspiracy. On May 20, 1942 General Field Marshal Milch authorized SS General Wolff to go ahead at Dachau Camp with so-called "cold experiments"; and four female gypsies were supplied for the purpose. Himmler gave permission to carry on these "experiments" also in other camps. (1617-PS) At Dachau,

the reports of the "doctor" in charge show that victims were immersed in cold water until their body temperature was reduced to 28 degrees centigrade (82.4 degrees Farenheit), when they all died immediately (1618-PS). This was in August 1942. But the "doctor's" technique improved. By February 1943 he was able to report that 30 persons were chilled to 27 to 29 degrees, their hands and feet frozen white, and their bodies "rewarmed" by a hot bath. But the Nazi scientific triumph was "rewarming with animal heat." The victim, all but frozen to death, was surrounded with bodies of living women until he revived and responded to his environment by having sexual intercourse. (1616-PS) Here Nazi degeneracy reached its nadir.

I dislike to encumber the record with such morbid tales, but we are in the grim business of trying men as criminals, and these are the things that their own agents say happened. We will show you these concentration camps in motion pictures, just as the Allied armies found them when they arrived, and the measures General Eisenhower had to take to clean them up. Our proof will be disgusting and you will say I have robbed you of your sleep. But these are the things which have turned the stomach of the world and set every civilized hand against Nazi Germany.

Germany became one vast torture chamber. Cries of its victims were heard round the world and brought shudders to civilized people everywhere. I am one who received during this war most atrocity tales with suspicion and scepticism. But the proof here will be so overwhelming that I venture to predict not one word I have spoken will be denied. These defendants will only deny personal responsibility or knowledge.

Under the clutch of the most intricate web of espionage and intrigue that any modern state has endured, and persecution and torture of a kind that has not been visited upon the world in many centuries, the elements of the German population which were both decent and courageous were annihilated. Those which were decent but weak were intimidated. Open resistance, which had never been more than feeble and irresolute, disappeared. But resistance, I am happy to say, always remained, although it was manifest in only such events as the abortive effort to assassinate Hitler on July 20, 1944. With resistance driven underground, the Nazi had the German State in his own hands.

But the Nazis not only silenced discordant voices. They created positive controls as effective as their negative ones. Propaganda organs, on a scale never before known, stimulated the Party and Party formations with a permanent enthusiasm and abandon such as we, democratic people, can work up only for a few days before

a general election. They inculcated and practiced the Führerprinzip which centralized control of the Party and of the Party-controlled State over the lives and thought of the German people, who are accustomed to look upon the German State, by whomever controlled, with a mysticism that is incomprehensible to my people.

All these controls from their inception were exerted with unparalleled energy and single-mindedness to put Germany on a war footing. We will show from the Nazis' own documents their secret training of military personnel, their secret creation of a military air force. Finally, a conscript army was brought into being. Financiers, economists, industrialists joined in the plan and promoted elaborate alterations in industry and finance to support an unprecedented concentration of resources and energies upon preparations for war. Germany's rearmament so outstripped the strength of her neighbors that in about a year she was able to crush the whole military force of continental Europe, exclusive of that of Soviet Russia, and then to push the Russian armies back to the Volga. These preparations were of a magnitude which surpassed all need of defense, and every defendant, and every intelligent German, well understood them to be for aggressive purposes.

Experiments in Aggression:

Before resorting to open aggressive warfare, the Nazis undertook some rather cautious experiments to test the spirit of resistance of those who lay across their path. They advanced, but only as others yielded, and kept in a position to draw back if they found a temperament that made persistence dangerous.

On 7 March 1936 the Nazis reoccupied the Rhineland and then proceeded to fortify it in violation of the Treaty of Versailles and the Pact of Locarno. They encountered no substantial resistance and were emboldened to take the next step, which was the acquisition of Austria. Despite repeated assurances that Germany had no designs on Austria, invasion was perfected. Threat of attack forced Schuschnigg to resign as Chancellor of Austria and put the Nazi Defendant Seyss-Inquart in his place. The latter immediately opened the frontier and invited Hitler to invade Austria "to preserve order". On March 12th invasion began. The next day, Hitler proclaimed himself Chief of the Austrian State, took command of its armed forces, and a law was enacted annexing Austria to Germany.

Threats of aggression had succeeded without arousing resistance. Fears nevertheless had been stirred. They were lulled by an assurance to the Czechoslovak Government that there would be no attack on that country. We will show that the Nazi Government

already had detailed plans for the attack. We will lay before you the documents in which these conspirators planned to create an incident to justify their attack. They even gave consideration to assassinating their own Ambassador at Prague in order to create a sufficiently dramatic incident. They did precipitate a diplomatic crisis which endured throughout the summer. Hitler set September 30th as the day when troops should be ready for action. Under the threat of immediate war, the United Kingdom and France concluded a pact with Germany and Italy at Munich on September 29, 1938, which required Czechoslovakia to acquiesce in the cession of the Sudetenland to Germany. It was consummated by German occupation on October 1, 1938.

The Munich Pact pledged no further aggression against Czechoslovakia, but the Nazi pledge was lightly given and quickly broken. On the 15th of March 1939, in defiance of the treaty of Munich itself, the Nazis seized and occupied Bohemia and Moravia, which constituted the major part of Czechoslovakia not already ceded to Germany. Once again the West stood aghast, but it dreaded war, it saw no remedy except war, and it hoped against hope that the Nazi fever for expansion had run its course. But the Nazi world was intoxicated by these unresisted successes in open alliance with Mussolini and in covert alliance with Franco. Then, having made a deceitful, delaying peace with Russia, the conspirators entered upon the final phase of the plan to renew war.

War of Aggression:

I will not prolong this address by detailing the steps leading to the war of aggression which began with the invasion of Poland on September 1, 1939. The further story will be unfolded to you from documents including those of the German High Command itself. The plans had been laid long in advance. As early as 1935 Hitler appointed the Defendant Schacht to the position of General Deputy for the War Economy (2261-PS). We have the diary of General Jodl (1780-PS); the "Plan Otto," Hitler's own order for attack on Austria in case trickery failed (C-102); the "Plan Green" which was the blueprint for attack on Czechoslovakia (388-PS); plans for the war in the West (375-PS, 376-PS); Funk's letter to Hitler dated August 25, 1939 detailing the long course of economic preparation (699-PS); Keitel's top-secret mobilization order for 1939-40 prescribing secret steps to be taken during a "period of tension" during which no " 'state of war' will be publicly declared even if open war measures against the foreign enemy will be taken." This letter order (1639A-PS) is in our possession despite a secret order issued on March 16, 1945, when Allied troops were advancing into the heart of Germany, to burn these plans. We have also Hitler's directive,

dated December 18, 1940, for the "Barbarossa Contingency" outlining the strategy of the attack upon Russia (446-PS). That plan in the original bears the initials of the Defendants Keitel and Jodl. They were planning the attack and planning it long in advance of the declaration of war. We have detailed information concerning "Case White," the plan for attack on Poland (C-120). That attack began the war. The plan was issued by Keitel on April 3rd, 1939. The attack did not come until September. Steps in preparation for the attack were taken by subordinate commanders, one of whom issued an order on June 14, providing that:

> "The Commander-in-Chief of the Army has ordered the working out of a *plan of deployment against Poland* which takes in account the demands of the political leadership *for the opening of war by surprise and for quick success*....
>
> "I declare it the duty of the commanding generals, the divisional commanders, and the commandants to limit as much as possible the number of persons who will be informed, and to limit the extent of the information, and ask that all suitable measures be taken to prevent persons not concerned from getting information....
>
> "The operation, in order to forestall an orderly Polish mobilization and concentration, is to be opened by surprise with forces which are for the most part armored and motorized, placed on alert in the neighborhood of the border. The initial superiority over the Polish frontier guards and surprise that can be expected with certainty are to be maintained by quickly bringing up other parts of the Army as well to counteract the marching up of the Polish Army....
>
> "If the development of the political situation should show that a surprise at the beginning of the war is out of question, because of well-advanced defense preparations on the part of the Polish Army, the Commander-in-Chief of the Army will order the opening of the hostilities only after the assembling of sufficient additional forces. The basis of all preparations will be to surprise the enemy...." (2327-PS)

We have also the order for the invasion of England, signed by Hitler and initialed by Keitel and Jodl. It is interesting that it commences with a recognition that although the British military position is "hopeless," they show not the slightest sign of giving in. (442-PS)

Not the least incriminating are the minutes of Hitler's meeting with his high advisers. As early as November 5, 1937 Hitler told Defendants Göring, Raeder, and Neurath, among others, that German rearmament was practically accomplished and that he had

decided to secure by force, starting with a lightning attack on Czechoslovakia and Austria, greater living space for Germans in Europe no later than 1943-45 and perhaps as early as 1938 (386-PS). On the 23rd of May, 1939 the Führer advised his staff that:

> "It is a question of expanding our living space in the East and of securing our food supplies.... Over and above the natural fertility, thorough-going German exploitation will enormously increase the surplus.
>
> "There is therefore no question of sparing Poland, and we are left with the decision: *To attack Poland at the first suitable opportunity.* We cannot expect a repetition of the Czech affair. There will be war." (L-79)

On August 22nd, 1939 Hitler again addressed members of the High Command, telling them when the start of military operations would be ordered. He disclosed that for propaganda purposes, he would provocate a good reason. "It will make no difference," he announced, "whether this reason will sound convincing or not. After all, the victor will not be asked whether he talked the truth or not. We have to proceed brutally. The stronger is always right." (1014-PS) On 23 November 1939, after the Germans had invaded Poland, Hitler made this explanation:

> ". . . For the first time in history we have to fight on only one front, the other front is at present free. But no one can know how long that will remain so. I have doubted for a long time whether I should strike in the East and then in the West. Basically I did not organize the armed forces in order not to strike. The decision to strike was always in me. Earlier or later I wanted to solve the problem. Under pressure it was decided that the East was to be attacked first . . . ." (789-PS)

We know the bloody sequel. Frontier incidents were staged. Demands were made for cession of territory. When Poland refused, the German forces invaded on September 1st, 1939. Warsaw was destroyed; Poland fell. The Nazis, in accordance with plan, moved swiftly to extend their aggression throughout Europe and to gain the advantage of surprise over their unprepared neighbors. Despite repeated and solemn assurances of peaceful intentions, they invaded Denmark and Norway on 9th April 1940; Belgium, The Netherlands, and Luxembourg on 10th May 1940; Yugoslavia and Greece on 6th April 1941.

As part of the Nazi preparation for aggression against Poland and her allies, Germany, on 23rd August 1939, had entered into a non-aggression pact with Soviet Russia. It was only a delaying treaty intended to be kept no longer than necessary to prepare for

its violation. On June 22, 1941, pursuant to long-matured plans, the Nazis hurled troops into Soviet territory without any declaration of war. The entire European world was aflame.

Conspiracy with Japan:

The Nazi plans of aggression called for use of Asiatic allies and they found among the Japanese men of kindred mind and purpose. They were brothers, under the skin.

Himmler records a conversation he had on January 31, 1939 with General Oshima, Japanese Ambassador at Berlin. He wrote:

> "Furthermore, he (Oshima) had succeeded up to now to send 10 Russians with bombs across the Caucasian frontier. These Russians had the mission to kill Stalin. A number of additional Russians, whom he had also sent across, had been shot at the frontier." (2195-PS)

On September 27th, 1940 the Nazis concluded a German-Italian-Japanese 10-year military and economic alliance by which those powers agreed "to stand by and cooperate with one another in regard to their efforts in Greater East Asia and regions of Europe respectively wherein it is their prime purpose to establish and maintain a new order of things."

On March 5, 1941 a top-secret directive was issued by Defendant Keitel. It stated that the Führer had ordered instigation of Japan's active participation in the war and directed that Japan's military power has to be strengthened by the disclosure of German war experiences and support of a military, economic, and technical nature has to be given. The aim was stated to be to crush England quickly thereby keeping the United States out of the war. (C-75)

On March 29, 1941 Ribbentrop told Matsuoka, the Japanese Foreign Minister, that the German Army was ready to strike against Russia. Matsuoka reassured Ribbentrop about the Far East. Japan, he reported, was acting at the moment as though she had no interest whatever in Singapore, but intends to strike when the right moment comes. (1877-PS)

On April 5, 1941 Ribbentrop urged Matsuoka that entry of Japan into the war would "hasten the victory" and would be more in the interest of Japan than of Germany since it would give Japan a unique chance to fulfill her national aims and to play a leading part in Eastern Asia (1882-PS).

The proofs in this case will also show that the leaders of Germany were planning war against the United States from its Atlantic as well as instigating it from its Pacific approaches. A captured memorandum from the Führer's headquarters, dated October 29, 1940, asks certain information as to air bases and supply and reports further that:

"The Führer is at present occupied with the question of the occupation of the Atlantic islands with a view to the prosecution of war against America at a later date. Deliberations on this subject are being embarked upon here." (376-PS)

On December 7th, 1941, a day which the late President Roosevelt declared, "will live in infamy," victory for German aggression seemed certain. The Wehrmacht was at the gates of Moscow. Taking advantage of the situation, and while her plenipotentiaries were creating a diplomatic diversion in Washington, Japan without declaration of war treacherously attacked the United States at Pearl Harbor and the Philippines. Attacks followed swiftly on the British Commonwealth, and The Netherlands in the Southwest Pacific. These aggressions were met in the only way that they could be met, with instant declarations of war and with armed resistance which mounted slowly through many long months of reverse until finally the Axis was crushed to earth and deliverance for its victims was won.

Your Honor, I am about to take up "Crimes in the Conduct of War", which is quite a separate subject. We are within 5 minutes of the recessing time. It will be very convenient for me if it will be agreeable to you.

THE PRESIDENT: We will sit again in 15 minutes' time.

[The Tribunal recessed until 1550 hours.]

THE PRESIDENT: The Tribunal must request that if it adjourns for 15 minutes members of the bar and others are back in their seats after an interval of 15 minutes. Mr. Justice Jackson, I understand that you wish to continue to 5:15, when you may be able to conclude your speech?

MR. JUSTICE JACKSON: I think that would be the most orderly way.

THE PRESIDENT: Yes, the Tribunal will be glad to do so.

MR. JUSTICE JACKSON: May it please your Honor, I will now take up the subject of "Crimes in the Conduct of War".

Even the most warlike of peoples have recognized in the name of humanity some limitations on the savagery of warfare. Rules to that end have been embodied in international conventions to which Germany became a party. This code had prescribed certain restraints as to the treatment of belligerents. The enemy was entitled to surrender and to receive quarter and good treatment as a prisoner of war. We will show by German documents that these

rights were denied, that prisoners of war were given brutal treatment and often murdered. This was particularly true in the case of captured airmen, often my countrymen.

It was ordered that captured English and American airmen should no longer be granted the status of prisoners of war. They were to be treated as criminals and the Army was ordered to refrain from protecting them against lynching by the populace. (R-118) The Nazi Government, through its police and propaganda agencies, took pains to incite the civilian population to attack and kill airmen who crash-landed. The order, given by the Reichsführer SS Himmler on 10 August 1943, directed that: "It is not the task of the police to interfere in clashes between German and English and American flyers who have bailed out". This order was transmitted on the same day by SS Obersturmbannführer Brand of Himmler's personal staff to all senior executive SS and Police officers, with these directions:

> "I am sending you the inclosed order with the request that the Chief of the Regular Police and of the Security Police be informed. They are to make this instruction known to their subordinate officers verbally." (R-110)

Similarly, we will show Hitler's top secret order, dated 18 October 1942, that Commandos, regardless of condition, were "to be slaughtered to the last man" after capture (498-PS). We will show the circulation of secret orders, one of which was signed by Hess, to be passed orally to civilians, that enemy fliers or parachutists were to be arrested or liquidated (062-PS). By such means were murders incited and directed.

This Nazi campaign of ruthless treatment of enemy forces assumed its greatest proportions in the fight against Russia. Eventually all prisoners of war were taken out of control of the Army and put in the hands of Himmler and the SS (058-PS). In the East, the German fury spent itself. Russian prisoners were ordered to be branded. They were starved. I shall quote passages from a letter written February 28, 1942 by Defendant Rosenberg to Defendant Keitel:

> "The fate of the Soviet prisoners of war in Germany is on the contrary a tragedy of the greatest extent. Of 3,600,000 prisoners of war, only several hundred thousand are still able to work fully. A large part of them has starved, or died, because of the hazards of the weather. Thousands also died from spotted fever....
>
> "The camp commanders have forbidden the civilian population to put food at the disposal of the prisoners, and they have rather let them starve to death....

"In many cases, when prisoners of war could no longer keep up on the march because of hunger and exhaustion, they were shot before the eyes of the horrified population, and the corpses were left.

"In numerous camps, no shelter for the prisoners of war was provided at all. They lay under the open sky during rain or snow. Even tools were not made available to dig holes or caves....

"Finally, the shooting of prisoners of war must be mentioned; for instance, in various camps, all the 'Asiatics' were shot". (081-PS)

Civilized usage and conventions to which Germany was a party had prescribed certain immunities for civilian populations unfortunate enough to dwell in lands overrun by hostile armies. The German occupation forces, controlled or commanded by men on trial before you, committed a long series of outrages against the inhabitants of occupied territory that would be incredible except for captured orders and captured reports which show the fidelity with which those orders were executed.

We deal here with a phase of common criminality designed by the conspirators as part of the common plan. We can appreciate why these crimes against their European enemies were not of a casual character but were planned and disciplined crimes when we get at the reason for them. Hitler told his officers on August 22, 1939 that: "The main objective in Poland is the destruction of the enemy and not the reaching of a certain geographical line" (1014-PS). The project of deporting promising youth from occupied territories was approved by Rosenberg on the theory that "a desired weakening of the biological force" of the conquered people is being achieved (031-PS). To Germanize or to destroy was the program. Himmler announced, "Either we win over any good blood that we can use for ourselves and give it a place in our people or, gentlemen —you may call this cruel, but nature is cruel,—we destroy this blood." As to "racially good types" Himmler further advised, "Therefore, I think that it is our duty to take their children with us, to remove them from their environment, if necessary by robbing or stealing them" (L-70). He urged deportation of Slavic children to deprive potential enemies of future soldiers.

The Nazi purpose was to leave Germany's neighbors so weakened that even if she should eventually lose the war, she would still be the most powerful nation in Europe. Against this background, we must view the plan for ruthless warfare, which means a plan for the commission of War Crimes and Crimes against Humanity.

Hostages in large numbers were demanded and killed. Mass punishments were inflicted, so savage that whole communities were extinguished. Rosenberg was advised of the annihilation of three unidentified villages in Slovakia. (970-PS) In May of 1943 another village of about 40 farms and 220 inhabitants was ordered wiped out. The entire population was ordered shot, the cattle and property impounded, and the order required that "the village will be destroyed totally by fire." (163-PS) A secret report from Rosenberg's Reich Ministry of Eastern Territory reveals that:

> "Food rations allowed the Russian population are so low that they fail to secure their existence and provide only for minimum subsistence of limited duration. The population does not know if they will still live tomorrow. They are faced with death by starvation....
>
> "The roads are clogged by hundreds of thousands of people, sometimes as many as one million according to the estimate of experts, who wander around in search of nourishment....
>
> "Sauckel's action has caused unrest among the civilians.... Russian girls were deloused by men, nude photos in forced positions were taken, women doctors were locked into freight cars for the pleasure of the transport commanders, women in night shirts were fettered and forced through the Russian towns to the railroad station, etc. All this material has been sent to the OKH." (1381-PS)

Perhaps the deportation to slave labor was the most horrible and extensive slaving operation in history. On few other subjects is our evidence so abundant or so damaging. In a speech made on January 25, 1944 the Defendant Frank, Governor General of Poland, boasted, "I have sent 1,300,000 Polish workers into the Reich" (059-PS, P. 2). The Defendant Sauckel reported that "out of the 5 million foreign workers who arrived in Germany not even 200,000 came voluntarily." This fact was reported to the Führer and Defendants Speer, Göring, and Keitel. (R-24) Children of 10 to 14 years were impressed into service by telegraphic order of Rosenberg's Ministry for the Occupied Eastern Territories:

> "The Command is further charged with the transferring of worthwhile Russian youth between 10-14 years of age, to the Reich. The authority is not affected by the changes connected with the evacuation and transportation to the reception camps of Bialystok, Krajewo, and Olitei. The Führer wishes that this activity be increased even more." (200-PS)

When enough labor was not forthcoming, prisoners of war were forced into war work in flagrant violation of international conventions (016-PS). Slave labor came from France, Belgium, Holland,

Italy, and the East. Methods of recruitment were violent (R-124, 018-PS, 204-PS). The treatment of these slave laborers was stated in general terms, not difficult to translate into concrete deprivations, in a letter to the Defendant Rosenberg from the Defendant Sauckel, which stated:

> "All *prisoners of war,* from the *territories* of the West as well as of the East, actually in Germany, must be completely incorporated into the German armament and munition industries. Their production must be brought to the highest possible level....
>
> "The complete employment of all prisoners of war as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of labor program in this war.
>
> "All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degrees of expenditure...." (016-PS)

In pursuance of the Nazi plan permanently to reduce the living standards of their neighbors and to weaken them physically and economically, a long series of crimes were committed. There was extensive destruction, serving no military purpose, of the property of civilians. Dikes were thrown open in Holland almost at the close of the war not to achieve military ends but to destroy the resources and retard the economy of the thrifty Netherlanders.

There was carefully planned economic syphoning off of the assets of occupied countries. An example of the planning is shown by a report on France dated December 7, 1942 made by the Economic Research Department of the Reichsbank. The question arose whether French occupation costs should be increased from 15 million Reichsmarks per day to 25 million Reichsmarks per day. The Reichsbank analyzed French economy to determine whether it could bear the burden. It pointed out that the armistice had burdened France to that date to the extent of 18½ billion Reichsmarks, equalling 370 billion francs. It pointed out that the burden of these payments within 2½ years equalled the aggregate French national income in the year 1940, and that the amount of payments handed over to Germany in the first 6 months of 1942 corresponded to the estimate for the total French revenue for that whole year. The report concluded:

> "In any case, the conclusion is inescapable that relatively heavier tributes have been imposed on France since the armistice in June 1940 than upon Germany after the World War. In this connection, it must be noted that the economic

powers of France never equalled those of the German Reich and that the vanquished France could not draw on foreign economic and financial resources in the same degree as Germany after the last World War."

The Defendant Funk was the Reich Minister of Economics and President of the Reichsbank; the Defendant Ribbentrop was Foreign Minister; the Defendant Göring was Plenipotentiary of the Four Year Plan; and all of them participated in the exchange of views of which this captured document is a part. (2149-PS) Notwithstanding this analysis by the Reichsbank, they proceeded to increase the imposition on France from 15 million Reichsmarks daily to 25 million per day.

It is small wonder that the bottom has been knocked out of French economy. The plan and purpose of the thing appears in a letter from General Stülpnagel, head of the German Armistice Commission, to the Defendant Jodl as early as 14 September 1940 when he wrote, "The slogan 'Systematic weakening of France' has already been surpassed by far in reality" (1756-PS).

Not only was there a purpose to debilitate and demoralize the economy of Germany's neighbors for the purpose of destroying their competitive position, but there was looting and pilfering on an unprecedented scale. We need not be hypocritical about this business of looting. I recognize that no army moves through occupied territory without some pilfering as it goes. Usually the amount of pilfering increases as discipline wanes. If the evidence in this case showed no looting except of that sort, I certainly would ask no conviction of these defendants for it.

But we will show you that looting was not due to the lack of discipline or to the ordinary weaknesses of human nature. The German organized plundering, planned it, disciplined it, and made it official just as he organized everything else, and then he compiled the most meticulous records to show that he had done the best job of looting that was possible under the circumstances. And we have those records.

The Defendant Rosenberg was put in charge of a systematic plundering of the art objects of Europe by direct order of Hitler dated 29 January 1940 (136-PS). On the 16th of April 1943 Rosenberg reported that up to the 7th of April, 92 railway cars with 2,775 cases containing art objects had been sent to Germany; and that 53 pieces of art had been shipped to Hitler direct, and 594 to the Defendant Göring. The report mentioned something like 20,000 pieces of seized art and the main locations where they were stored. (015-PS)

Moreover this looting was glorified by Rosenberg. Here we have 39 leather-bound tabulated volumes of his inventory, which in due

time we will offer in evidence. One cannot but admire the artistry of this Rosenberg report. The Nazi taste was cosmopolitan. Of the 9,455 articles inventoried, there were included 5,255 paintings, 297 sculptures, 1,372 pieces of antique furniture, 307 textiles, and 2,224 small objects of art. Rosenberg observed that there were approximately 10,000 more objects still to be inventoried. (015-PS) Rosenberg himself estimated that the values involved would come close to a billion dollars (090-PS).

I shall not go into further details of the War Crimes and Crimes against Humanity committed by the gangster ring whose leaders are before you. It is not the purpose in my part of this case to deal with the individual crimes. I am dealing with the Common Plan or design for crime and will not dwell upon individual offenses. My task is to show the scale on which these crimes occurred, and to show that these are the men who were in the responsible positions and who conceived the plan and design which renders them answerable, regardless of the fact that the plan was actually executed by others.

At length, this reckless and lawless course outraged the world. It recovered from the demoralization of surprise attack, assembled its forces and stopped these men in their tracks. Once success deserted their banners, one by one the Nazi satellites fell away. Sawdust Caesar collapsed. Resistance forces in every occupied country arose to harry the invader. Even at home, Germans saw that Germany was being led to ruin by these mad men, and the attempt on July 20, 1944 to assassinate Hitler, an attempt fostered by men of highest station, was a desperate effort by internal forces in Germany to stop short of ruin. Quarrels broke out among the failing conspirators, and the decline of the Nazi power was more swift than its ascendancy. German Armed Forces surrendered, its Government disintegrated, its leaders committed suicide by the dozen, and by the fortunes of war these defendants fell into our hands. Although they are not, by any means, all the guilty ones, they are survivors among the most responsible. Their names appear over and over in the documents and their faces grace the photographic evidence. We have here the surviving top politicians, militarists, financiers, diplomats, administrators, and propagandists, of the Nazi movement. Who was responsible for these crimes if they were not?

The Law of the Case:

The end of the war and capture of these prisoners presented the victorious Allies with the question whether there is any legal responsibility on high-ranking men for acts which I have described. Must such wrongs either be ignored or redressed in hot

blood? Is there no standard in the law for a deliberate and reasoned judgment on such conduct?

The Charter of this Tribunal evidences a faith that the law is not only to govern the conduct of little men, but that even rulers are, as Lord Chief Justice Coke put it to King James, "under God and the law." The United States believed that the law long has afforded standards by which a juridical hearing could be conducted to make sure that we punish only the right men and for the right reasons. Following the instructions of the late President Roosevelt and the decision of the Yalta conference President Truman directed representatives of the United States to formulate a proposed International Agreement, which was submitted during the San Francisco Conference to Foreign Ministers of the United Kingdom, the Soviet Union, and the Provisional Government of France. With many modifications, that proposal has become the Charter of this Tribunal.

But the Agreement which sets up the standards by which these prisoners are to be judged does not express the views of the signatory nations alone. Other nations with diverse but highly respected systems of jurisprudence also have signified adherence to it. These are Belgium, The Netherlands, Denmark, Norway, Czechoslovakia, Luxembourg, Poland, Greece, Yugoslavia, Ethiopia, Australia, Haiti, Honduras, Panama, New Zealand, Venezuela, and India. You judge, therefore, under an organic act which represents the wisdom, the sense of justice, and the will of 21 governments, representing an overwhelming majority of all civilized people.

The Charter by which this Tribunal has its being, embodies certain legal concepts which are inseparable from its jurisdiction and which must govern its decision. These, as I have said, also are conditions attached to the grant of any hearing to defendants. The validity of the provisions of the Charter is conclusive upon us all, whether we have accepted the duty of judging or of prosecuting under it, as well as upon the defendants, who can point to no other law which gives them a right to be heard at all. My able and experienced colleagues believe, as do I, that it will contribute to the expedition and clarity of this Trial if I expound briefly the application of the legal philosophy of the Charter to the facts I have recited.

While this declaration of the law by the Charter is final, it may be contended that the prisoners on trial are entitled to have it applied to their conduct only most charitably if at all. It may be said that this is new law, not authoritatively declared at the time they did the acts it condemns, and that this declaration of the law has taken them by surprise.

I cannot, of course, deny that these men are surprised that this is the law; they really are surprised that there is any such thing as law. These defendants did not rely on any law at all. Their program ignored and defied all law. That this is so will appear from many acts and statements, of which I cite but a few.

In the Führer's speech to all military commanders on November 23, 1939 he reminded them that at the moment Germany had a pact with Russia, but declared: "Agreements are to be kept only as long as they serve a certain purpose." Later in the same speech he announced: "A violation of the neutrality of Holland and Belgium will be of no importance" (789-PS). A top secret document, entitled "Warfare as a Problem of Organization," dispatched by the Chief of the High Command to all commanders on April 19, 1938 declared that "the normal rules of war towards neutrals may be considered to apply on the basis whether operation of rules will create greater advantages or disadvantages for the belligerents" (L-211). And from the files of the German Navy Staff, we have a "Memorandum on Intensified Naval War," dated October 15, 1939, which begins by stating a desire to comply with International Law. "However," it continues, "if decisive successes are expected from any measure considered as a war necessity, it must be carried through even if it is not in agreement with international law." (L-184) International law, natural law, German law, any law at all was to these men simply a propaganda device to be invoked when it helped and to be ignored when it would condemn what they wanted to do. That men may be protected in relying upon the law at the time they act is the reason we find laws of retrospective operations unjust. But these men cannot bring themselves within the reason of the rule which in some systems of jurisprudence prohibits *ex post facto* laws. They cannot show that they ever relied upon international law in any state or paid it the slightest regard.

The third Count of the Indictment is based on the definition of War Crimes contained in the Charter. I have outlined to you the systematic course of conduct toward civilian populations and combat forces which violates international conventions to which Germany was a party. Of the criminal nature of these acts at least, the defendants had, as we shall show, clear knowledge. Accordingly, they took pains to conceal their violations. It will appear that the Defendants Keitel and Jodl were informed by official legal advisors that the orders to brand Russian prisoners of war, to shackle British prisoners of war, and to execute commando prisoners were clear violations of international law. Nevertheless, these orders were put into effect. The same is true of orders issued for the assassination of General Giraud and General Weygand, which failed to be executed

only because of a ruse on the part of Admiral Canaris, who was himself later executed for his part in the plot to take Hitler's life on July 20, 1944.

The fourth Count of the Indictment is based on Crimes against Humanity. Chief among these are mass killings of countless human beings in cold blood. Does it take these men by surprise that murder is treated as a crime?

The first and second Counts of the Indictment add to these crimes the crime of plotting and waging wars of aggression and wars in violation of nine treaties to which Germany was a party. There was a time, in fact, I think the time of the first World War, when it could not have been said that war-inciting or war making was a crime in law, however reprehensible in morals.

Of course, it was, under the law of all civilized peoples, a crime for one man with his bare knuckles to assault another. How did it come that multiplying this crime by a million, and adding fire arms to bare knuckles, made it a legally innocent act? The doctrine was that one could not be regarded as criminal for committing the usual violent acts in the conduct of legitimate warfare. The age of imperialistic expansion during the eighteenth and nineteenth centuries added the foul doctrine, contrary to the teachings of early Christian and international law scholars such as Grotius, that all wars are to be regarded as legitimate wars. The sum of these two doctrines was to give war-making a complete immunity from accountability to law.

This was intolerable for an age that called itself civilized. Plain people with their earthy common sense, revolted at such fictions and legalisms so contrary to ethical principles and demanded checks on war immunities. Statesmen and international lawyers at first cautiously responded by adopting rules of warfare designed to make the conduct of war more civilized. The effort was to set legal limits to the violence that could be done to civilian populations and to combatants as well.

The common sense of men after the first World War demanded, however, that the law's condemnation of war reach deeper, and that the law condemn not merely uncivilized ways of waging war, but also the waging in any way of uncivilized wars—wars of aggression. The world's statesmen again went only as far as they were forced to go. Their efforts were timid and cautious and often less explicit than we might have hoped. But the 1920's did outlaw aggressive war.

The re-establishment of the principle that there are unjust wars and that unjust wars are illegal is traceable in many steps. One of the most significant is the Briand-Kellogg Pact of 1928, by which

Germany, Italy, and Japan, in common with practically all nations of the world, renounced war as an instrument of national policy, bound themselves to seek the settlement of disputes only by pacific means, and condemned recourse to war for the solution of international controversies. This pact altered the legal status of a war of aggression. As Mr. Stimson, the United States Secretary of State put it in 1932, such a war:

> ". . . is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing.... By that very act, we have made obsolete many legal precedents and have given the legal profession the task of re-examining many of its codes and treaties."

The Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, signed by the representatives of 48 governments, declared that "a war of aggression constitutes . . . an international crime." The Eighth Assembly of the League of Nations in 1927, on unanimous resolution of the representatives of 48 member nations, including Germany, declared that a war of aggression constitutes an international crime. At the Sixth Pan-American Conference of 1928, the 21 American Republics unanimously adopted a resolution stating that "war of aggression constitutes an international crime against the human species."

A failure of these Nazis to heed, or to understand the force and meaning of this evolution in the legal thought of the world, is not a defense or a mitigation. If anything, it aggravates their offense and makes it the more mandatory that the law they have flouted be vindicated by juridical application to their lawless conduct. Indeed, by their own law—had they heeded any law—these principles were binding on these defendants. Article 4 of the Weimar constitution provided that: "The generally accepted rules of international law are to be considered as binding integral parts of the law of the German Reich" (2050-PS). Can there be any doubt that the outlawry of aggressive war was one of the "generally accepted rules of international law" in 1939?

Any resort to war—to any kind of a war—is a resort to means that are inherently criminal. War inevitably is a course of killings, assaults, deprivations of liberty, and destruction of property. An honestly defensive war is, of course, legal and saves those lawfully conducting it from criminality. But inherently criminal acts cannot be defended by showing that those who committed them were engaged in a war, when war itself is illegal. The very minimum legal consequence of the treaties making aggressive wars illegal is to strip those who incite or wage them of every defense the law

ever gave, and to leave war-makers subject to judgment by the usually accepted principles of the law of crimes.

But if it be thought that the Charter, whose declarations concededly bind us all, does contain new law I still do not shrink from demanding its strict application by this Tribunal. The rule of law in the world, flouted by the lawlessness incited by these defendants, had to be restored at the cost to my country of over a million casualties, not to mention those of other nations. I cannot subscribe to the perverted reasoning that society may advance and strengthen the rule of law by the expenditure of morally innocent lives but that progress in the law may never be made at the price of morally guilty lives.

It is true of course, that we have no judicial precedent for the Charter. But international law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treaties and agreements between nations and of accepted customs. Yet every custom has its origin in some single act, and every agreement has to be initiated by the action of some state. Unless we are prepared to abandon every principle of growth for international law, we cannot deny that our own day has the right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened international law. International law is not capable of development by the normal processes of legislation, for there is no continuing international legislative authority. Innovations and revisions in international law are brought about by the action of governments such as those I have cited, designed to meet a change in circumstances. It grows, as did the common law, through decisions reached from time to time in adapting settled principles to new situations. The fact is that when the law evolves by the case method, as did the common law and as international law must do if it is to advance at all, it advances at the expense of those who wrongly guessed the law and learned too late their error. The law, so far as international law can be decreed, had been clearly pronounced when these acts took place. Hence, I am not disturbed by the lack of judicial precedent for the inquiry it is proposed to conduct.

The events I have earlier recited clearly fall within the standards of crimes, set out in the Charter, whose perpetrators this Tribunal is convened to judge and punish fittingly. The standards for War Crimes and Crimes against Humanity are too familiar to need comment. There are, however, certain novel problems in applying other precepts of the Charter which I should call to your attention.

The Crime against Peace:

A basic provision of the Charter is that to plan, prepare, initiate, or wage a war of aggression, or a war in violation of international

treaties, agreements, and assurances, or to conspire or participate in a common plan to do so, is a crime.

It is perhaps a weakness in this Charter that it fails itself to define a war of aggression. Abstractly, the subject is full of difficulty and all kinds of troublesome hypothetical cases can be conjured up. It is a subject which, if the defense should be permitted to go afield beyond the very narrow charge in the Indictment, would prolong the Trial and involve the Tribunal in insoluble political issues. But so far as the question can properly be involved in this case, the issue is one of no novelty and is one on which legal opinion has well crystalized.

One of the most authoritative sources of international law on this subject is the Convention for the Definition of Aggression signed at London on July 3, 1933 by Romania, Estonia, Latvia, Poland, Turkey, the Soviet Union, Persia, and Afghanistan. The subject has also been considered by international committees and by commentators whose views are entitled to the greatest respect. It had been little discussed prior to the first World War but has received much attention as international law has evolved its outlawry of aggressive war. In the light of these materials of international law, and so far as relevant to the evidence in this case, I suggest that an "aggressor" is generally held to be that state which is the first to commit any of the following actions:

(1) Declaration of war upon another state;

(2) Invasion by its armed forces, with or without a declaration of war, of the territory of another state;

(3) Attack by its land, naval, or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another state; and

(4) Provision of support to armed bands formed in the territory of another state, or refusal, notwithstanding the request of the invaded state, to take in its own territory, all the measures in its power to deprive those bands of all assistance or protection.

And I further suggest that it is the general view that no political, military, economic, or other considerations shall serve as an excuse or justification for such actions; but exercise of the right of legitimate self-defense, that is to say, resistance to an act of aggression, or action to assist a state which has been subjected to aggression, shall not constitute a war of aggression.

It is upon such an understanding of the law that our evidence of a conspiracy to provoke and wage an aggressive war is prepared and presented. By this test each of the series of wars begun by these Nazi leaders was unambiguously aggressive.

It is important to the duration and scope of this Trial that we bear in mind the difference between our charge that this war was one of aggression and a position that Germany had no grievances. We are not inquiring into the conditions which contributed to causing this war. They are for history to unravel. It is no part of our task to vindicate the European *status quo* as of 1933, or as of any other date. The United States does not desire to enter into discussion of the complicated pre-war currents of European politics, and it hopes this trial will not be protracted by their consideration. The remote causations avowed are too insincere and inconsistent, too complicated and doctrinaire to be the subject of profitable inquiry in this trial. A familiar example is to be found in the "Lebensraum" slogan, which summarized the contention that Germany needed more living space as a justification for expansion. At the same time that the Nazis were demanding more space for the German people, they were demanding more German people to occupy space. Every known means to increase the birth rate, legitimate and illegitimate, was utilized. "Lebensraum" represented a vicious circle of demand—from neighbors more space, and from Germans more progeny. We do not need to investigate the verity of doctrines which led to constantly expanding circles of aggression. It is the plot and the act of aggression which we charge to be crimes.

Our position is that whatever grievances a nation may have, however objectionable it finds the *status quo*, aggressive warfare is an illegal means for settling those grievances or for altering those conditions. It may be that the Germany of the 1920's and 1930's faced desperate problems, problems that would have warranted the boldest measures short of war. All other methods—persuasion, propaganda, economic competition, diplomacy—were open to an aggrieved country, but aggressive warfare was outlawed. These defendants did make aggressive war, a war in violation of treaties. They did attack and invade their neighbors in order to effectuate a foreign policy which they knew could not be accomplished by measures short of war. And that is as far as we accuse or propose to inquire.

The Law of Individual Responsibility:

The Charter also recognizes individual responsibility on the part of those who commit acts defined as crimes, or who incite others to do so, or who join a common plan with other persons, groups or organizations to bring about their commission. The principle of individual responsibility for piracy and brigandage, which have long been recognized as crimes punishable under international law, is old and well established. That is what illegal warfare is.

This principle of personal liability is a necessary as well as logical one if international law is to render real help to the maintenance of peace. An international law which operates only on states can be enforced only by war because the most practicable method of coercing a state is warfare. Those familiar with American history know that one of the compelling reasons for adoption of our constitution was that the laws of the Confederation, which operated only on constituent states, were found ineffective to maintain order among them. The only answer to recalcitrance was impotence or war. Only sanctions which reach individuals can peacefully and effectively be enforced. Hence, the principle of the criminality of aggressive war is implemented by the Charter with the principle of personal responsibility.

Of course, the idea that a state, any more than a corporation, commits crimes, is a fiction. Crimes always are committed only by persons. While it is quite proper to employ the fiction of responsibility of a state or corporation for the purpose of imposing a collective liability, it is quite intolerable to let such a legalism become the basis of personal immunity.

The Charter recognizes that one who has committed criminal acts may not take refuge in superior orders nor in the doctrine that his crimes were acts of states. These twin principles working together have heretofore resulted in immunity for practically everyone concerned in the really great crimes against peace and mankind. Those in lower ranks were protected against liability by the orders of their superiors. The superiors were protected because their orders were called acts of state. Under the Charter, no defense based on either of these doctrines can be entertained. Modern civilization puts unlimited weapons of destruction in the hands of men. It cannot tolerate so vast an area of legal irresponsibility.

Even the German Military Code provides that:

> "If the execution of a military order in the course of duty violates the criminal law, then the superior officer giving the order will bear the sole responsibility therefor. However, the obeying subordinate will share the punishment of the participant: (1) if he has exceeded the order given to him, or (2) if it was within his knowledge that the order of his superior officer concerned an act by which it was intended to commit a civil or military crime or transgression." *(Reichsgesetzblatt,* 1926 No. 37, P. 278, Art. 47)

Of course, we do not argue that the circumstances under which one commits an act should be disregarded in judging its legal effect. A conscripted private on a firing squad cannot expect to

hold an inquest on the validity of the execution. The Charter implies common sense limits to liability just as it places common sense limits upon immunity. But none of these men before you acted in minor parts. Each of them was entrusted with broad discretion and exercised great power. Their responsibility is correspondingly great and may not be shifted to that fictional being, "the State", which cannot be produced for trial, cannot testify, and cannot be sentenced.

The Charter also recognizes a vicarious liability, which responsibility is recognized by most modern systems of law, for acts committed by others in carrying out a common plan or conspiracy to which a defendant has become a party. I need not discuss the familiar principles of such liability. Every day in the courts of countries associated in this prosecution, men are convicted for acts that they did not personally commit, but for which they were held responsible because of membership in illegal combinations or plans or conspiracies.

The Political, Police, and Military Organizations:

Accused before this Tribunal as criminal organizations are certain political and police organizations which the evidence will show to have been instruments of cohesion in planning and executing the crimes I have detailed. Perhaps the worst of the movement were the Leadership Corps of the NSDAP, the Schutzstaffeln or "SS", and the Sturmabteilungen or "SA", and the subsidiary formations which these include. These were the Nazi Party leadership, espionage, and policing groups. They were the real government, above and outside of any law. Also accused as organizations are the Reich Cabinet and the Secret Police, or Gestapo, which were fixtures of the Government but animated solely by the Party.

Except for a late period when some compulsory recruiting was done in the SS, membership in all these militarized organizations was voluntary. The police organizations were recruited from ardent partisans who enlisted blindly to do the dirty work the leaders planned. The Reich Cabinet was the governmental facade for Nazi Party Government and in its members legal, as well as actual responsibility was vested for the entire program. Collectively they were responsible for the program in general, individually they were especially responsible for segments of it. The finding which we ask you to make, that these are criminal organizations, will subject members to punishment to be hereafter determined by appropriate tribunals, unless some personal defense—such as becoming a member under threat to person, to family, or inducement by false representation, or the like—be established.

Every member will have a chance to be heard in the subsequent forum on his personal relation to the organization, but your finding in this trial will conclusively establish the criminal character of the organization as a whole.

We have also accused as criminal organizations the High Command and the General Staff of the German Armed Forces. We recognize that to plan warfare is the business of professional soldiers in all countries. But it is one thing to plan strategic moves in the event war comes, and it is another thing to plot and intrigue to bring on that war. We will prove the leaders of the German General Staff and of the High Command to have been guilty of just that. Military men are not before you because they served their country. They are here because they mastered it, along with these others, and drove it to war. They are not here because they lost the war, but because they started it. Politicians may have thought of them as soldiers, but soldiers know they were politicians. We ask that the General Staff and the High Command, as defined in the Indictment, be condemned as a criminal group whose existence and tradition constitute a standing menace to the peace of the world.

These individual defendants did not stand alone in crime and will not stand alone in punishment. Your verdict of "guilty" against these organizations will render *prima facie* guilty, as nearly as we can learn, thousands upon thousands of members now in custody of United States forces and of other armies.

The responsibility of this Tribunal:

To apply the sanctions of the law to those whose conduct is found criminal by the standards I have outlined, is the responsibility committed to this Tribunal. It is the first court ever to undertake the difficult task of overcoming the confusion of many tongues and the conflicting concepts of just procedure among divers systems of law, so as to reach a common judgment. The tasks of all of us are such as to make heavy demands on patience and good will. Although the need for prompt action has admittedly resulted in imperfect work on the part of the Prosecution, four great nations bring you their hurriedly assembled contributions of evidence. What remains undiscovered we can only guess. We could, with witnesses' testimony, prolong the recitals of crime for years—but to what avail. We shall rest the case when we have offered what seems convincing and adequate proof of the crimes charged without unnecessary cumulation of evidence. We doubt very much whether it will be seriously denied that the crimes I have outlined took place. The effort will undoubtedly be to mitigate or escape personal responsibility.

Among the nations which unite in accusing these defendants the United States is perhaps in a position to be the most dispassionate, for, having sustained the least injury, it is perhaps the least animated by vengeance. Our American cities have not been bombed by day and by night, by humans, and by robots. It is not our temples that had been laid in ruins. Our countrymen have not had their homes destroyed over their heads. The menace of Nazi aggression, except to those in actual service, has seemed less personal and immediate to us than to European peoples. But while the United States is not first in rancor, it is not second in determination that the forces of law and order be made equal to the task of dealing with such international lawlessness as I have recited here.

Twice in my lifetime, the United States has sent its young manhood across the Atlantic, drained its resources, and burdened itself with debt to help defeat Germany. But the real hope and faith that has sustained the American people in these great efforts was that victory for ourselves and our Allies would lay the basis for an ordered international relationship in Europe and would end the centuries of strife on this embattled continent.

Twice we have held back in the early stages of European conflict in the belief that it might be confined to a purely European affair. In the United States, we have tried to build an economy without armament, a system of government without militarism, and a society where men are not regimented for war. This purpose, we know now, can never be realized if the world periodically is to be embroiled in war. The United States cannot, generation after generation, throw its youth or its resources on to the battlefields of Europe to redress the lack of balance between Germany's strength and that of her enemies, and to keep the battles from our shores.

The American dream of a peace-and-plenty economy, as well as the hopes of other nations, can never be fulfilled if those nations are involved in a war every generation so vast and devastating as to crush the generation that fights and burden the generation that follows. But experience has shown that wars are no longer local. All modern wars become world wars eventually. And none of the big nations at least can stay out. If we cannot stay out of wars, our only hope is to prevent wars.

I am too well aware of the weaknesses of juridical action alone to contend that in itself your decision under this Charter can prevent future wars. Judicial action always comes after the event. Wars are started only on the theory and in the confidence that they can be won. Personal punishment, to be suffered only in the event the war is lost, will probably not be a sufficient deterrent to

prevent a war where the warmakers feel the chances of defeat to be negligible.

But the ultimate step in avoiding periodic wars, which are inevitable in a system of international lawlessness, is to make statesmen responsible to law. And let me make clear that while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by any other nations, including those which sit here now in judgment. We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law. This trial represents mankind's desperate effort to apply the discipline of the law to statesmen who have used their powers of state to attack the foundations of the world's peace and to commit aggressions against the rights of their neighbors.

The usefulness of this effort to do justice is not to be measured by considering the law or your judgment in isolation. This trial is part of the great effort to make the peace more secure. One step in this direction is the United Nations organization, which may take joint political action to prevent war if possible, and joint military action to insure that any nation which starts a war will lose it. This Charter and this Trial, implementing the Kellogg-Briand Pact, constitute another step in the same direction—juridical action of a kind to ensure that those who start a war will pay for it personally.

While the defendants and the prosecutors stand before you as individuals, it is not the triumph of either group alone that is committed to your judgment. Above all personalities there are anonymous and impersonal forces whose conflict makes up much of human history. It is yours to throw the strength of the law back of either the one or the other of these forces for at least another generation. What are the real forces that are contending before you?

No charity can disguise the fact that the forces which these defendants represent, the forces that would advantage and delight in their acquittal, are the darkest and most sinister forces in society—dictatorship and oppression, malevolence and passion, militarism and lawlessness. By their fruits we best know them. Their acts have bathed the world in blood and set civilization back a century. They have subjected their European neighbors to every outrage and torture, every spoliation and deprivation that insolence, cruelty, and greed could inflict. They have brought the German people to the lowest pitch of wretchedness, from which they can entertain no hope of early deliverance. They have stirred

hatreds and incited domestic violence on every continent. These are the things that stand in the dock shoulder to shoulder with these prisoners.

The real complaining party at your bar is Civilization. In all our countries it is still a struggling and imperfect thing. It does not plead that the United States, or any other country, has been blameless of the conditions which made the German people easy victims to the blandishments and intimidations of the Nazi conspirators.

But it points to the dreadful sequence of aggressions and crimes I have recited, it points to the weariness of flesh, the exhaustion of resources, and the destruction of all that was beautiful or useful in so much of the world, and to greater potentialities for destruction in the days to come. It is not necessary among the ruins of this ancient and beautiful city with untold members of its civilian inhabitants still buried in its rubble, to argue the proposition that to start or wage an aggressive war has the moral qualities of the worst of crimes. The refuge of the defendants can be only their hope that international law will lag so far behind the moral sense of mankind that conduct which is crime in the moral sense must be regarded as innocent in law.

Civilization asks whether law is so laggard as to be utterly helpless to deal with crimes of this magnitude by criminals of this order of importance. It does not expect that you can make war impossible. It does expect that your juridical action will put the forces of international law, its precepts, its prohibitions and, most of all, its sanctions, on the side of peace, so that men and women of good will, in all countries, may have "leave to live by no man's leave, underneath the law."

THE PRESIDENT: The Tribunal will now adjourn until 10 o'clock tomorrow morning.

[The Tribunal adjourned until 22 November 1945 at 1000 hours.]

THIRD DAY

Thursday, 22 November 1945

Morning Session

THE PRESIDENT: Before the Chief Prosecutor for the United States proceeds to present the evidence on Count One, the Tribunal wishes me to announce the decision on the application made on behalf of the Defendant Julius Streicher by his counsel that his condition should be examined. It has been examined by three medical experts on behalf of the Tribunal and their report has been submitted to and considered by the Tribunal; and it is as follows:

"1. The Defendant Julius Streicher is sane.

"2. The Defendant Julius Streicher is fit to appear before the Tribunal, and to present his defense.

"3. It being the unanimous conclusion of the examiners that Julius Streicher is sane, he is for that reason capable of understanding the nature and policy of his acts during the period of time covered by the Indictment."

The Tribunal accepts the report of the medical experts and the trial against Julius Streicher will, therefore, proceed.

The other matter to which I have to refer is a motion on behalf of counsel for Bormann, whom the Tribunal have decided to try in his absence in pursuance of Article 12 of the Charter. Counsel for Bormann has made a motion that the trial against him should be postponed, but, in view of the fact that the provisions of the Charter and the Tribunal's rules of procedure have been strictly carried out in the notices which have been given, and the fact that counsel for Bormann will have ample time before he is called upon to present defense on his behalf, the motion is denied.

I will now call upon counsel for the United States to present the evidence on Count One.

COL. STOREY: May it please the Tribunal, as the first order of business concerning the evidence, it shall be my purpose to outline the method of capturing, assembling, processing, and authenticating documents to be presented in evidence by the United States. I shall also describe and illustrate the plan of presenting documents and briefs relating to the United States' case-in-chief.

As the United States Army advanced into German territory, there were attached to each Army and subordinate organization specialized military personnel whose duties were to capture and

preserve enemy information in the form of documents, records, reports, and other files. The Germans kept accurate and voluminous records. They were found in Army headquarters, Government buildings, and elsewhere. During the later stages of the war, particularly, such documents were found in salt mines, buried in the ground, behind false walls, and many other places believed secure by the Germans. For example, the personal correspondence and diaries of the Defendant Rosenberg, including his Nazi correspondence, were found behind a false wall in an old castle in eastern Bavaria. The records of the OKL, or Luftwaffe, of which the Defendant Göring was Commander-in-Chief — equivalent to the records of the Headquarters of the Air Staff of the United States Army Air Forces — were found in various places in the Bavarian Alps. Most of such Luftwaffe records were assembled and processed by the Army at Berchtesgaden.

When the Army first captured documents and records, they immediately placed the materials under guard and later assembled them in temporary document centers. Many times the records were so voluminous that they were hauled by fleets of Army trucks to document centers. Finally, as the territory seized was made secure, Army zones were established and each Army established a fixed document center to which were transported the assembled documents and records. Later this material was indexed and cataloged, which was a slow process.

Beginning last June, Mr. Justice Jackson requested me to direct the assembling of documentary evidence on the continent for the United States case. Field teams from our office were organized under the direction of Major William H. Coogan, who established United States liaison officers at the main Army document centers. Such officers were directed to screen and analyze the mass of captured documents, and select those having evidentiary value for our case. Literally hundreds of tons of enemy documents and records were screened and examined and those selected were forwarded to Nuremberg for processing. I now offer in evidence an affidavit by Major Coogan, dated November 19, 1945, attached hereto, describing the method of procedure, capture, screening and delivery of such documents to Nuremberg. (Document Number 001 A-PS, Exhibit USA-1)

At this time, if Your Honors please, and in order to present this matter to the Tribunal, I believe it wise to read at least substantial portions of this affidavit. It is dated November 19, 1945.

"I, Major William H. Coogan, 0-455814, Q.M.C., a commissioned officer of the United States of America, do hereby certify as follows:

"1. The United States Chief of Counsel in July 1945 charged the Field Branch of the Documentation Division with the responsibility of collecting, evaluating, and assembling documentary evidence in the European Theater for use in the prosecution of the major Axis War Criminals before the International Military Tribunal. I was appointed Chief of the Field Branch on 20 July 1945. I am now the Chief of the Documentation Division, Office of United States Chief of Counsel.

"2. I have served in the United States Army for more than 4 years and am a practicing attorney by profession. Based upon my experience as an attorney and as a United States Army officer, I am familiar with the operation of the United States Army in connection with seizing and processing captured enemy documents. In my capacity as Chief of the Documentation Division, Office of the United States Chief of Counsel, I am familiar with and have supervised the processing, filing, translating, and photostating of all documentary evidence for the United States Chief of Counsel."

I skip to paragraph 4.

"4. The Field Branch of the Documentation Division was staffed by personnel thoroughly conversant with the German language. Their task was to search for and select captured enemy documents in the European Theater which disclosed information relating to the prosecution of the major Axis war criminals. Officers under my command were placed on duty at various document centers and also dispatched on individual missions to obtain original documents. When the documents were located, my representatives made a record of the circumstances under which they were found and all information available concerning their authenticity was recorded. Such documents were further identified by Field Branch pre-trial serial numbers, assigned by my representatives who would then periodically dispatch the original documents by courier to the Office of the United States Chief of Counsel.

"5. Upon receipt of these documents they were duly recorded and indexed. After this operation, they were delivered to the Screening and Analysis Branch of the Documentation Division of the Office of United States Chief of Counsel, which Branch re-examined the documents in order to finally determine whether or not they should be retained as evidence for the prosecutors. This final screening was done by German-speaking analysts on the staff of the United States Chief of Counsel. When the document passed the screeners, it was

then transmitted to the Document Room of the Office of United States Chief of Counsel, with a covering sheet prepared by the screeners showing the title or nature of the document, the personalities involved, and its importance. In the Document Room, a trial identification number was given to each document and to each group of documents, in cases where it was desirable for the sake of clarity to file several documents together.

"6. United States documents were given trial identification numbers in one of five series designated by the letters: "PS", "L", "R", "C", and "EC", indicating the means of acquisition of the documents. Within each series documents were listed numerically.

"7. After a document was so numbered, it was then sent to a German-speaking analyst who prepared a summary of the document with appropriate references to personalities involved, index headings, information as to the source of the document as indicated by the Field Branch, and the importance of the document to a particular phase of the case. Next, the original document was returned to the Document Room and then checked out to the Photostating Department, where photostatic copies were made. Upon return from photostating, it was placed in an envelope in one of the several fireproof safes in the rear of the Document Room. One of the photostatic copies of the document was sent to the translators, thereafter leaving the original itself in the safe. A commissioned officer has been, and is, responsible for the documents in the safe. At all times when he is not present the safe is locked and a military guard is on duty outside the only door. If the officers preparing the certified translation, or one of the officers working on the briefs, found it necessary to examine the original document, this was done within the Document Room in the section set aside for that purpose. The only exception to this strict rule has been where it has been occasionally necessary to present the original document to Defense Counsel for examination. In this case, the document was entrusted to a responsible officer of the Prosecution staff.

"8. All original documents are now located in safes in the Document Room, where they will be secured until they are presented by the Prosecution to the court during the progress of this Trial.

"9. Some of the documents which will be offered in evidence by the United States were seized and processed by the British Army. Also, personnel from the Office of the United

States Chief of Counsel and the British War Crimes Executive have acted jointly in locating, seizing and processing such documents.

"10. Substantially the same system of acquiring documentary evidence was utilized by the British Army and the British War Crimes Executive as above set forth with respect to the United States Army and the Office of the United States Chief of Counsel.

"11. Therefore, I certify in my official capacity as hereinabove stated, to the best of my knowledge and belief, that the documents captured in the British Zone of Operations and Occupation, which will be offered in evidence by the United States Chief of Counsel, have been authenticated, translated, and processed in substantially the same manner as hereinabove set forth with respect to the operations of the United States Chief of Counsel.

"12. Finally, I certify that all documentary evidence offered by the United States Chief of Counsel, including those documents from British Army sources, are in the same condition as captured by the United States and British Armies; that they have been translated by competent and qualified translators; that all photostatic copies are true and correct copies of the originals and that they have been correctly filed, numbered, and processed as above outlined."

Signed by: "William H. Coogan, Major, QMC, 0-455814."

After the documents selected by the screening process outlined reached our office, they were again examined, re-screened, and translated by expert U.S. Army personnel, as outlined by Major Coogan.

Finally, more than 2,500 documents were selected and filed here in this Court House. At least several hundred will be offered in evidence. They have been photographed, translated into English, filed, indexed, and processed. The same general procedure was followed by the British War Crimes Executive with regard to documents captured by the British Army, and there has been complete integration and cooperation of activities with the British in that regard.

In order to present our case and to assist the Tribunal, we have prepared written briefs on each phase of our case which cite the documents by appropriate numbers. Legal propositions of the United States will also be presented in such briefs. The briefs and documents will cover each allegation of the Indictment which is the United States' responsibility. I hold in my hand one of the trial briefs entitled "Reshaping of Education, Training of Youth,"

which will be offered later on this day. Accompanying each brief is a document book containing true copies in English of all documents referred to in the brief. I hold in my hand the document book that will be submitted to this Tribunal in support of the brief which I have just exhibited to your Honors. Likewise, copies in German have been, or will be, furnished to Defense counsel at the time such documents are offered in evidence. Upon conclusion of the presentation of each phase or section of our case by counsel, the entire book of documents will be offered in evidence, such as this book. At the same time, Lieutenant Barrett who will sit right here all during the Trial and who is on our staff, will hand to the clerk of this Tribunal the original documents that may be offered in evidence in this form. It will have the seal of the Tribunal, will be Exhibit USA, 2836-PS, and in turn Lieutenant Barrett will hand that original document to the Tribunal. In the same manner, the document book will be passed by Lieutenant Barrett to the clerk of the Court, and these trial briefs for the assistance of the Tribunal will be made available to the Court and to Defense Counsel. Likewise, copies of documents actually introduced in evidence will be made available to the press. Thus, may Your Honors please, it is hoped that by this procedure the usual laborious and tedious method of introducing documentary evidence may be expedited.

May I, therefore, respectfully inquire of the Tribunal and of Defense counsel if there is any objection to the procedure outlined? If not, the United States will proceed with the presentation of the documentary and trial briefs as outlined herein.

THE PRESIDENT: The Tribunal has no objection to the course that you propose.

COL. STOREY: If Your Honors please, may I now announce what will be presented immediately following by the United States?

THE PRESIDENT: I think perhaps that I ought to say to counsel for the defendants that their silence will be taken as their assent to the course proposed. In the absence of any objection by them to the course proposed by Colonel Storey on behalf of the Chief Prosecutor for the United States, the Tribunal will take it that they agree that the course is convenient.

Thank you, gentlemen.

COL. STOREY: If Your Honors please, the next presentation will be the briefs and documents on the Common Plan or Conspiracy up to 1939. We will open by presentation of charts of the Nazi Party and Reich Government with exhibits and explanation by Mr. Albrecht. That will be followed by a presentation of the

trial briefs and documents on the other phases of the Common Plan or Conspiracy up to 1939.

RALPH G. ALBRECHT (Associate Trial Counsel for the United States): May it please the Tribunal, the Prosecution will now allude briefly to certain facts, which may well be considered to be within judicial purview, the consideration of which the Prosecution has found useful in understanding and evaluating the evidence that will be presented in the course of the Trial, in support of the allegations of the Indictment.

In the opinion of the Prosecution, some preliminary references must be made to the National Socialist German Labor Party, the NSDAP, which in itself is not one of the defendant organizations in this proceeding, but which is represented among the defendant organizations by its most important formations, namely the Leadership Corps of the NSDAP, which you will hear referred to as Das Korps der Politischen Leiter der NSDAP, the SS (Die Schutzstaffeln der NSDAP), and the SA (Die Sturmabteilungen) of the Party.

With the permission of the Tribunal the Prosecution will offer at this point, as its first exhibit, a chart showing the structure and organization of the NSDAP, substantially as it existed at the peak of its development in March 1945. This chart has been prepared by the Prosecution on the basis of information contained in important and well-known official publications of the National Socialist Party with which the defendants must be presumed to have been well acquainted. We refer particularly to the *Organization Book of the Party, (Das Organisationsbuch der NSDAP),* and to the *National Socialist Year Book, (Nationalsozialistisches Jahrbuch),* of both of which, be it noted, the late Defendant Robert Ley was the chief editor or publisher. Both books appeared, in the course of time, in many editions and in hundreds of thousands of copies, throughout the period when the National Socialist Party was in control of the German Reich and of the German people. The chart, furthermore, which we are offering has been certified on its face as correct by a high official of the Nazi Party, namely Franz Xaver Schwarz, its treasurer (Reichsschatzmeister der NSDAP) and its official in charge of Party administration; and his affidavit is being submitted with the chart, and I now wish to offer this chart in evidence. (Document Number 2903-PS, Exhibit USA-2.)

We have been able to have this chart duplicated, and, with the permission of the Tribunal, we are making it available to all concerned.

Before I offer some remarks of explanation concerning the organization of the National Socialist German Labor Party, which, we believe, will be found useful in connection with the Prosecution's

case, I would just like to call the attention of the Tribunal to the fact that the larger chart which now appears is a simplification of the duplicated chart which Your Honors have been furnished. For if it had been reproduced in the same detail, I am afraid many of the boxes would not have appeared intelligible from this point.

I would like to call your attention first of all to an organization with which we will have to become very familiar: the Leadership Corps of the NSDAP, (the Reichsleiter), which has been named as a defendant organization and which comprises the sum of the officials and leaders of the Nazi Party. If Your Honors will be good enough to follow me down the center line of the chart, we come to the main horizontal line of division where the word "Reichsleiter" appears. That is the first category of the Leadership Corps, I should say, the main category, perhaps, of the Leadership Corps.

The Führer, of course, stands above it. As we follow the vertical line of division to the lower part of the chart, we reach five additional boxes, which may be referred to collectively as the Hoheitsträger, the bearers of the sovereignty of the Party, and those are the Gauleiter, the Kreisleiter, the Ortsgruppenleiter, the Zellenleiter, and the Blockleiter.

The Führer at the top of our chart is the supreme and the only leader in the Nazi hierarchy. His successor-designate was first the Defendant Hess and subsequently the Defendant Göring.

The Reichsleiter, of whom 16 are shown on this chart, comprise collectively the Party Directorate (Reichsleitung). Through them, coordination of the Party and State machinery was achieved. A number of these Reichsleiter, each of whom, at some time, was in charge of at least one office within the Party Directorate, were also the heads of other Party formations and affiliated and supervised organizations of the Party and also of agencies of the State, and they even held ministerial positions. The Reichsleitung may be said to represent the horizontal organization of the Party according to functions, within which all threads controlling the varied life of the German people met. Each office within the Reichsleitung of the NSDAP executed definite tasks assigned to it by the Führer, or by the leader of the Party Chancellery (Chef der Parteikanzlei), who on the chart before you appears directly under the Führer.

In 1945 the chief of the Party Chancellery was Martin Bormann, the defendant in this proceeding, and before him, and until his flight to England in 1941, the Defendant Rudolf Hess. It was the duty of the Reichsleitung to make certain that these tasks assigned to it by the Führer were carried out with expedition and

without interruption, in order that the will of the Führer quickly and rapidly was communicated to the lowest Party echelon, the lowliest Zelle or Block. The individual offices of the Reichsleitung had the mission to remain in constant and closest contact with the life of the people through the agency of the subdivisions of the component Party organizations in the Gaue, within the Kreis, or the Ort or the lower group. These leaders had been taught that the right to organize human beings accrued through the appreciation of the fact that a people must be educated ideologically; "weltanschaulich", the Germans call it, that is to say, according to the philosophy of National Socialism.

Among the Reichsleiter, on trial in this cause, may be included the following defendants:

If Your Honors will follow me to this broad, horizontal line, we start at the extreme left at the box marked with the Defendant Frank's name. At one time, although not in March 1945, he was the head of the Legal Office of the Party. He was the Reichsleiter des Reichsrechtsamtes.

In the third square appears the Defendant Rosenberg, the delegate of the Führer for Ideological Training and Education of the Party. He was called "Der Beauftragte des Führers für die Überwachung der gesamten geistigen und weltanschaulichen Schulung der NSDAP." Next to him, to the right, is the Defendant Von Schirach, leader of youth education, (Leiter für die Jugenderziehung). Next to him, appears the late Defendant Robert Ley, at one time head of the Party Organization (Reichsorganisationsleiter der NSDAP) and also the leader of the German Labor Front, the DAF (Leiter der Deutschen Arbeitsfront).

Then, if we cross the vertical line, and proceed to the right—in passing I might allude to the box marked with the name of Schwarz. He was the Party official and Reichsleiter, who certified to the chart before the Tribunal.

As we proceed further to the right, next to the last box, we find the name of the Defendant Frick, who was the leader of the Reichstag fraction (Leiter der NS Reichstagsfraktion).

The next categories to be considered are the Hoheitsträger, at the bottom of the vertical line, in the center of the chart. The National Socialists called them the bearers of sovereignty. To them was assigned the political sovereignty over specially designated subdivisions of the State, of which they were the appointed leaders. The Hoheitsträger may be said to represent the vertical organization of the Party.

These leaders, these Hoheitsträger included all Gauleiter, of whom there were 42 within the Reich in 1945. A Gauleiter was a

political leader of the largest subdivision of the State. He was charged by the Führer with the political, cultural, and economic control over all forms and manifestations of the life of the people and the coordination of the same with National Socialist philosophy and ideology.

A number of the defendants before the bar of this Tribunal were former Gauleiter of the NSDAP. I mention, in this connection, the Defendant Streicher, Gauleiter of Franconia, "Franken-Führer" they called him, whose seat was in the city of Nuremberg. Von Schirach was Gauleiter of Vienna and the Defendant Sauckel was Gauleiter of Thuringia.

The next lower category on the chart were the Kreisleiter, the political leaders of the largest subdivision within a Gau. Then follow the Ortsgruppenleiter, the political leaders of the largest subdivision within the Kreis. And a Kreis consisted perhaps of several towns or villages or, in the case of a larger city, anywhere from 1,500 to 3,000 households.

The next Hoheitsträger were the Zellenleiter, the political leaders of a group from four to eight city blocks, or of a corresponding group within country districts, and then follow the Blockleiter, the political leaders of from 40 to 60 households.

Now, each of these political leaders, of these Hoheitsträger, or bearers of sovereignty, was directly responsible to the next highest leader in the Nazi hierarchy. The Gauleiter was directly responsible to the Führer himself; the Kreisleiter was directly responsible to the Gauleiter, the Ortsgruppenleiter to the Kreisleiter, and so on.

The Führer himself reserved to himself, in accordance with the philosophy that runs through the Party, the right to name all Führer. It was he, personally, that named the Reichsleiter, all members of the Party Directorate. It was he that appointed all Gauleiter and Kreisleiter and all political leaders, down to the grade of Gauamtsleiter, which was a lower classification of political leader within the Party organization of the Gau.

These Hoheitsträger, together with the Reichsleitung, constituted the all-powerful group of leaders by means of which the Nazi Party reached right down into the lives of the people, consolidated its control of them and compelled them to conform to the National Socialist pattern. For this purpose broad powers were given to them, including the right to call upon all Party formations to effectuate their plans. They could requisition the services of the SA and of the SS, as well as of the HJ and of the NSKK. If I may direct your attention, for the moment, to the Party organizations that appear at the extreme left of the chart, I would just like to say that structurally these organizations were organized regionally

to accord with the offices and regions controlled by the Hoheitsträger. If I might be more explicit, let us take the SA. The subsidiary formations of the SA came down and corresponded, in its lower organizations, to the Gau, so that we have a Gauleitung in the SA, and further down, to the Kreis, so that we have a Kreisleitung in the SA, so that the Gauleiter and the Kreisleiter, to cite two examples, charged with a particular duty by the Führer, could call on these organizations for assistance in carrying out their tasks.

These sinister implications of the use of this power will become more apparent as the Prosecution's case develops, and as the wealth of evidentiary material is introduced into evidence to prove the criminality of the defendant organizations.

The component Party-organizations, called "Gliederungen" within the Party, are shown at the extreme left of the chart, and are the organizations to which I directed the attention of Your Honors a moment ago. These organizations actually constitute the Party itself, and substantially the entire Party-membership is contained within these organizations. The four principal organizations are sometimes referred to as "para-military" organizations. They were uniformed organizations and they were armed. These organizations were the notorious SA and SS, which are named as party-defendants in this case, the HJ (Hitler Youth), and the NSKK—the Motor Corps of the Party (Kraftfahrkorps). Then there were also the National Socialist Women's Organization, the National Socialist German Students' Bund (Nationalsozialistischer Deutscher Studentenbund), and the National Socialist University Teachers' Organization (Nationalsozialistischer Dozentenbund).

There are additional organizations that were officially designated within the Party, as affiliated organizations, not Gliederungen or controlled organizations, but affiliated organizations (Angeschlossene Verbände der NSDAP). Among those organizations we have the German Labor Front (Deutsche Arbeitsfront)—the DAF; we have an organization that controlled the civil service (Reichsbund der Deutschen Beamten). There were the physicians within the National Socialist Deutscher Ärztebund; there were the teachers in the National Socialist Lehrerbund; there were the lawyers within the National Socialist Rechtswahrerbund, of which, at one time, the Defendant Frank was the head.

There is another group of organizations which was officially known as supervised organizations (Betreute Organisationen der NSDAP), organizations that included certain specialized women's organizations (Deutsches Frauenwerk), certain student societies (Nationalsozialistische Deutsche Studentenschaft), former university students (Altherrenbund der Deutschen Studenten). There was a

group that had reference to the German communes (Nationalsozialistischer Deutscher Gemeindetag), and there was a Reichsbund für Leibesübungen that interested itself in controlling all those interested in physical exercise.

According to the official Party designations applicable to the various organizations and associations that controlled German life there was a fourth category, which is the last organization that appears to the right on the chart before Your Honors, which is sometimes simply called "Weitere Nationalsozialistische Organisationen", and here, in some respects, we are in "No man's land", because the Party was not static, it was dynamic and our latest information is now to the effect that the organizations that ordinarily came within this category, well-known organizations like the RAD (Reich Labor Service) and the NSFK (the National Socialist Fliegerkorps) or Flying Corps may no longer be included there. At least that was the opinion of the Party treasurer, who certified to this chart.

I think with these few remarks, I have given some general impression of the structure of the Party, with which we are dealing in this proceeding before Your Honors.

Before leaving the chart, perhaps I would just like to point out several other instances where some of the defendants appear in this set-up.

At the very top, to the left of the Führer, as marked on the chart before Your Honors, are the successors-designate of the Führer. First is the Defendant Hess, until 1941, and followed by the Defendant Göring. Under the Führer appears the chief of the Party Chancellery, the Defendant Martin Bormann, and then, if we come to the level of the Reichsleiter, and go to the left, opposite Rosenberg's name, we find that somewhat below that his name is repeated as the head of an office on a lower level, namely, the Foreign Relations Office of the Party, which played such a sinister influence in the early work of the Party, as will later appear in the documentary evidence to be presented to Your Honors.

We then come to the late Defendant Ley's name, on the main horizontal division, and follow the dotted line to a lower level, and we will find he was the chief of the German Labor Front, and if we come closer to the vertical line, to a lower level, below the Reichsleitung, we find the Defendant Speer in the Hauptamt für Technik (the Office of Technical Affairs), and below that as the chief of the Bund Deutscher Technik (German Technological League).

With the permission of the Tribunal, the Prosecution will now pass to the consideration of the governmental machinery of the German State, which, like the organization of the Nazi Party,

requires some brief observations before the Prosecution proceeds with the submission of proof on the Common Plan of Conspiracy, with which the defendants have been charged.

If the Tribunal will allow, the Prosecution will offer as its second exhibit, another chart, delineating substantially the governmental structure of the Reich Government as it existed in March 1945, and also the chief Leadership Corps of the Reich Government and the Reich Administration during those years. (Document Number 2905-PS, Exhibit USA-3)

This chart has been prepared by the Prosecution on the basis of information contained in two official publications, *Das Taschenbuch für Verwaltungsbeamte, (the Manual for Administrative Officers)* and the *National Sozialistisches Jahrbuch,* to which I have already alluded, edited by the Defendant Ley.

This chart has been examined, corrected, and certified by the Defendant Wilhelm Frick, whose affidavit is submitted with the chart. In fact, it is reproduced directly on the copies of the charts before Your Honors.

It seems plain that the Defendant Frick, a former Minister of Interior of the Reich from January 1933 to August 1943, was well qualified, by reason of his position and long service in public office during the National Socialist regime, to certify to the substantial accuracy of the facts disclosed in this chart.

Now, with the permission of the Tribunal, I would like to make some brief comments on this chart.

First of all, we refer to the Reichsregierung, which is the big box in the center of the chart on the vertical line, directly below Hitler. The Reichsregierung is a word that may not be translated literally as "government of the Reich." The word "Reichsregierung" is a word of art and is applied collectively to the ministers who composed the German Cabinet.

The Reichsregierung has been named as a defendant in this proceeding, and as used in the Indictment the expression "Reichsregierung" identifies a group which, we will urge, should be declared to have been a criminal organization.

This group includes all the men named in that center box, who were members of the Cabinet after 30 January 1933, that is, Reich ministers with and without portfolio, and all other officials entitled to participate in the deliberations of the Cabinet.

Secondly, it includes members of the Counsel of Ministers for the Defense of the Reich. It is called "Ministerrat für die Reichsverteidigung", which is the large box to the right of the vertical line.

Then, it includes the members of the Secret Cabinet Council, which is the small box to the left of the vertical line, the Geheimer

Kabinettsrat, of which the Defendant Von Neurath was the President.

Unlike the Cabinets and Ministerial Councils in countries that were not within the orbit of the Axis, the Reichsregierung, after 30 January, 1933 when Adolf Hitler became Chancellor of the German Reich, did not remain merely the executive branch of the Government. In short order it also came to be possessed, and it exercised legislative, and other functions as well, in the governmental system into which the German Government developed while under the domination of the National Socialist Party.

It is proper to observe here that unlike such Party organizations as the SA and SS, the Reichsregierung, before 1933, certainly, was not a body created exclusively or even predominantly for the purpose of committing illegal acts. The Reichsregierung was an instrument of government provided for by the Weimar constitution. Under the Nazi regime, however, the Reichsregierung gradually became a primary agent of the Party, with functions formulated in accordance with the objectives and methods of the Party itself. The Party to all intents and purposes, was intended to be a Führerorden, an order of Führer, a pool of political leaders. And while the Party was, in the words of a German law, "the bearer of the concept of the German State," it was not identical with the State.

Thus, in order to realize its ideological and political objectives and to reach the German people, the Party had to avail itself of official state channels.

The Reichsregierung, and such agencies and offices established by it, were the chosen instruments, by means of which the Party policies were converted into legislative and administrative acts, binding upon the German people as a whole.

In order to accomplish this result, the Reichsregierung was thoroughly remodelled by the Party. Some of the steps may be here recorded, by which the coordination of Party and State machinery was assured in order to impose the will of the Führer on the German people.

On January 30, 1933, the date that the Führer became Reich Chancellor, there were few National Socialists that were Cabinet members. But, as the power of the Party in the Reich grew, the Cabinet came to include an ever increasing number of Nazis, until by January 1937 no non-Party member remained in the Reichsregierung. New cabinet-posts were created and Nazis appointed to them. Many of these cabinet members were also in the Reichsleitung of the Party.

To give but a few examples:

The Defendant Rosenberg, whose name Your Honors will find in that central box on the vertical line, the delegate of the Führer for Ideological Training and Education of the Party, was a member of the Reichsregierung in his capacity as Minister for the Occupied Eastern Areas, the Reichsminister für die besetzten Ostgebiete.

And if Your Honors will follow me on the vertical line to the main horizontal line and proceed to the very end, you will find a box marked "Ministry for the Occupied Eastern Territories", of which the head was the Defendant Rosenberg.

The Defendant Frick, the leader of the National Socialist fraction in the Reichstag, was also Minister of the Interior.

If Your Honors will follow me down to the main horizontal line and two boxes over you will find the Ministry presided over by the Defendant Frick. Goebbels, the Reichsleiter für Propaganda, also sat in the Cabinet as Minister for Public Enlightenment and Propaganda (Reichsminister für Volksaufklärung und Propaganda). He is in the next box to the right from the Ministry of the Interior.

After the 25th of July 1934 Party participation in the work of the Cabinet was at all times achieved through the person of the Defendant Rudolf Hess, the deputy of the Führer. By a decree of Hitler the Defendant Hess was invested with the power to take part in the editing of legislative bills with all the departments of the Reich. Later this power of the Führer's deputy was expanded to include all executive decisions and orders that were published in the *Reichsgesetzblatt,* the official volume in which are contained the decrees of the State. After Hess's flight to England in 1941, the Defendant Martin Bormann, as his successor, took over the same functions, and in addition he was given the authority of a Reichsminister so that he could sit in the Cabinet.

Now, another item of importance:

On the 30th of January 1937, four years after Hitler became Chancellor, the Führer executed the acceptances into the Party of those last few Cabinet members who still remained out of the Party. Only one Cabinet member had the strength of character to reject membership in the Party. That was the Minister of Transportation and Minister of Posts, Mr. Eltz-Rübenach. His example was not followed by the Defendant Von Neurath. His example was not followed by the Defendant Raeder. And if the Defendant Schacht was not yet at that time a member of the Party, I might say that his example was not followed by the Defendant Schacht.

The chart shows many other instances where Party members on the highest, as well as subordinate levels, occupied corresponding or other positions in the organization of the State. Take Hitler himself. The Führer of the NSDAP was also the Chancellor of the

Reich, with which office, furthermore, the office of President of the Reich was joined and merged after the death of President Von Hindenburg in 1934.

Take the Defendant Göring, the successor-designate of Hitler. As Führer of the SA, he sat in the Cabinet as Air Minister (Luftfahrtminister) and he also held many other important positions, including that of Commander-in-Chief of the Luftwaffe (the German Air Force) and that of Delegate for the Four Year Plan.

Himmler, the notorious head of the SS, the Reichsführer SS, was also the chief of the German Police, reporting to the Defendant Frick. He himself later became Minister of the Interior after the attempted assassination of Hitler on June 20, 1944, which event also catapulted him into the position of Commander-in-Chief of the German Reserve Army.

Now, at the extreme upper left of the chart is a small box that is labeled "Reichstag" (the former German parliament).

THE PRESIDENT: The Tribunal will adjourn for 10 minutes, and 10 minutes only.

[A recess was taken]

MR. ALBRECHT: The Reichstag presents an anomaly in this picture. Under the republic it had been the supreme law-making body of the Reich, subject only to a limited check by the Reichsrat (the Council of the Reich), by the President, and by the people themselves by way of initiative and referendum.

Putting their opposition to all forms of Parliamentarianism into effect at once, the Nazis proceeded to curtail the powers of the Reichstag, to eliminate the Reichsrat, and to merge the Presidency with the Office of Chancellor occupied by the Führer. By the Act of 24th of March 1933 the Cabinet was given unlimited legislative powers, including the right to deviate from the constitution. Subsequently, as I stated, the Reichsrat was abolished, and with that act the residuum of the power to legislate in the Reichstag was reduced to a minimum. I say the power was reduced to a minimum because the actual power to legislate was never taken away from the Reichstag, but certainly after the advent of the Party to power it was never permitted to exercise as a legislature.

The Reichsregierung retained its legislative powers throughout, even though from time to time other agencies of the Reichsregierung, such as the Plenipotentiary for Administration, in the upper right of the chart, (the Generalbevollmächtigter für die Reichsverwaltung), the Plenipotentiary for Economy, also in the right-hand corner of the chart, (the Generalbevollmächtigter für die Wirtschaft), and the Council of Ministers for the Defense of the

Reich, were created. That is the big box to the right of the vertical line. And these agencies of the Reichsregierung received certain concurrent legislative powers.

The development of the Reichstag into an emasculated legislative body was, however, only an intermediate step on the road to rule by Führer decrees. That was the ultimate goal of the Party, and a goal which they achieved.

The Nazis then proceeded to delegate some of the powers of the Reich Cabinet to all sorts of newly created agencies, some of which I have already mentioned. Cabinet functions were delegated first of all to the Reich Defense Council, the Reichsverteidigungsrat, possibly as early as the 4th of April 1933, but we believe certainly not later than 1935. I might say in this connection that with respect to a number of these agencies of the Reichsregierung which received delegated powers, we are moving in a somewhat shadowy land, because in developing this organization we are dealing—to some extent, at least—with decrees and actions that were secret, or secretive, in character.

A number of these decrees were never definitely fixed in time. A number of them were never published and the German people themselves never became acquainted with them. And that is why I say that the Reich Defense Council may possibly have been created as early as two and one-half months after the advent of Hitler to power but we believe that we will be able to show to the satisfaction of the Tribunal that that important body in the Government of the Reich was created certainly not later than May 1935.

I say it is an important body. This was the war-planning group, of which Hitler himself was chairman and the Defendant Göring the alternate. It was a large war-planning body, as Your Honors will note, that included many Cabinet members, and there was also a working committee—the true numerical size of which does not appear from the chart—which was presided over by the Defendant Keitel. That also was composed of Cabinet members and of Reich defense officials, the majority of whom were appointed by Cabinet officers and subject to their control. Other powers were delegated to the Plenipotentiary, whom I have named before, for Administration, appearing at the extreme right of the chart. That was the Defendant Frick, and later the notorious Himmler.

Subordinate to Frick in his capacity as Plenipotentiary for Administration were complete ministries, the Ministry of the Interior (Frick's old ministry), Ministry of Justice, Education, Church Affairs, and Raumordnung (the Ministry for Special Planning).

Other powers went to the delegate for the Four Year Plan, again the Defendant Göring, whose box appears to the left of the median line, half way to the edge.

There were certain other powers that went to an organization within the shadow-land I mentioned, and which, unfortunately, does not have its name appear on this chart, the Dreierkollegium (the College of Three), which title should really be imposed over the last three boxes in the upper right hand corner; because the Dreierkollegium consisted not alone of the Plenipotentiary for Administration, but also the Plenipotentiary for War Economy, and the chairman of that group who, I believe, was the Defendant Keitel, as the head of the OKW, the Wehrmacht, all the armed forces. The duties of the Dreierkollegium would seem to have included the drafting of decrees in preparation of and for use during war. To the Secret Cabinet Council, the Geheimer Kabinettsrat, of which the Defendant Von Neurath was chairman,—or President, I believe was his title, went other powers. That Secret Cabinet Council was created by a decree of the Führer in 1938.

Certain other delegation of power took place to the Ministerrat für die Reichsverteidigung (the Ministerial Council for the Defense of the Realm), which is the smallest box appearing under the large box of the Reich Defense Council, to the right of the vertical line.

The Council of Ministers for the Defense of the Reich was responsible to the Führer alone. Its membership, as would seem to be indicated on the chart, was taken from the Reich Defense Council. It had broad powers to issue decrees with the force of law in so far as the Reichsregierung itself had not legislated on the subject.

It should be stressed that this delegation of Cabinet functions to various groups, composed largely of its own members, helped to conceal some of the important policies of the Reichsregierung, namely, those relating to the preparation of war, which delegated the necessary authority to secret and semi-secret agencies. Thus in a general way, as I have outlined, did the National Socialist Party succeed in putting Nazi policies into effect through its dummy, through the machinery of the State, the Reichsregierung, in its revised form.

I think it might be helpful if Your Honors will permit me to point out on this chart the large number of instances in which the defendants' names reappear in connection with the functions of the Government of the Reich.

Now, first of all, the Reichsregierung itself—I am sorry to say in that connection that there is one omission, a very important omission. It is the name of the Vice Chancellor under Hitler, Von Papen, who was Vice Chancellor from the seizure of power until some time around the purge in June 1934.

Your Honors will see a grouping of Reich Ministers with portfolio, and under it of Ministers without portfolio, in which mostly

the names of the defendants in court are listed. There are State Ministers listed acting as Reich Ministers, and you will note the name of the Defendant Frank. There are other participants in Cabinet meetings, among which you will notice the name of the Defendant Von Schirach.

Now, this whole line on which the Cabinet hangs is the level of the Reich Cabinet, and as I have stated, organizations that grew out of this maternal organism, the Reichsregierung.

To the left the Secret Cabinet Council includes the names of the defendants. Still further to the left is the delegate for the Four Year Plan. And over to the very end is the Reichstag, of which the President was the Defendant Göring, and the leader of the Reichstagsfraktion, the Defendant Frick.

If we proceed to the right of the median line, we have the Reich Defense Council, with Hitler himself as chairman, the Reich Defense Committee under it, and the Ministerial Council for the Defense of the Realm, which grew out of the Reich Defense Council. And we see mostly the names of Cabinet ministers, including, if I may advert to that fact, particularly the names of purely military leaders, such as the Defendant Raeder and the Defendant Keitel.

And farther to the right, all names mentioned as defendants in these proceedings, Schacht, the first Plenipotentiary for War Economy, later succeeded by Funk; Field Marshal Keitel as the Chief of the OKW, and the Defendant Frick again as Plenipotentiary for Administration, in the triangle which became known as the "Dreierkollegium."

If we descend the vertical line to the horizontal line in the middle, we have the various ministries over which these Cabinet ministers, this Reichsregierung, presided. We have also at the extreme left and the extreme right, very important and special offices that were set up at the instigation of the Party, and those offices reported directly to the Führer himself.

If I may start at the extreme left, I will point out that as the civil government moved after the military machine into the lowlands, the Defendant Seyss-Inquart became the Reichskommissar for the Netherlands.

A few names below that of Seyss-Inquart is the name of the Defendant Von Neurath, the Reichsprotektor for Bohemia and Moravia, who was later succeeded by the Defendant Frick; and under those names, the name of the Defendant Frank, the Generalgouverneur of Poland.

Adjoining the box of these administrators who reported directly to the Reich Chancellor and President was the Foreign Office,

presided over first by the Defendant Von Neurath, and subsequently by the Defendant Von Ribbentrop.

If we proceed down below the elongation under the smaller box dealing with German legations, there should, of course, in any itemized, detailed treatment of that box appear the name of the Defendant Von Papen, the representative of the Reich in Austria for a time, and later in Turkey.

The next box on the horizontal line is the Ministry of Economics, (the Reichswirtschaftsministerium). First is the name of the Defendant Schacht, followed by the name of the Defendant Göring, and by the name of the Defendant Funk.

The next box, the Ministry for Armament and War Production (the Reichsministerium für Rüstung und Kriegsproduktion), was presided over by the Defendant Speer. And out of this organization, and subordinate to it, in the box devoted to the Organization Todt, again the name of the Defendant Speer, who succeeded Todt to the leadership of that organization upon the death of Todt.

Two boxes over, the Ministry of Justice, if Your Honors will follow me, down close to the bottom of the page to the last left-hand box, appearing under the Ministry of Justice, is the Reichsrechtsanwaltskammer—I am sorry, the box next to the bottom at the left which is devoted to the Academy for German Law (Die Akademie für deutsches Recht), over which the Defendant Frank presided for a time.

Almost at the vertical line, the Air Ministry, of which the Defendant Göring was Oberkommandant; and next to it again the Ministry of the Interior, presided over by the Defendant Frick.

If Your Honors will follow me again to the bottom of all the squares to the small horizontal line at the bottom of the Ministry of the Interior, we come to certain state officials, called "Reich Governors" (Reichsstatthalter). And if those boxes were sufficiently detailed there would appear thereon the names, among others, of the Defendant Sauckel, who besides being the Gauleiter of Thuringia, was also the Reichsstatthalter or Governor there. There would also appear the name of the Defendant Von Schirach, who was not only the Gauleiter of Vienna, but also the State representative there—the Governor—the Reichsstatthalter of Vienna.

And springing out of the Ministry of the Interior is the box or boxes devoted to the German police, and in the first sub-division appearing to the right, the Chief of the Security Police and SD, the name of the Defendant Kaltenbrunner.

In the Ministry of Propaganda, about midway down in this box, appears the name of the Defendant Fritzsche, who, although as the chart is drawn, would not appear in the position of one of the

chief directing heads of the Ministry, actually was very much more important than his position there will indicate; and proof will be submitted to Your Honors in support of that contention.

At the end of the horizontal line is the Ministry for the Occupied Eastern Territories (the Reichsministerium für die Besetzten Ostgebiete) of which the Defendant Rosenberg was the head.

And to the right of that box, among the agencies immediately subordinate to Hitler as Reichskanzler and President, there is the office of General Inspector for Highways, with the name of the Defendant Speer associated with it; the General Inspector for Water and Energy, again with the name of the Defendant Speer associated with it.

There follows the Reich Office for Forestry (the Reichsforstamt) under the Defendant Göring; the Reichsjugendführer (the leader of the Reich Youth), the Defendant Von Schirach; the Reich Housing Commissioner (Reichswohnungskommissar), the late Defendant Robert Ley; and among the subsequent agencies, that of the important Reichsbank, over which the Defendant Schacht presided, to be succeeded subsequently by the Defendant Funk; the General Inspector for the Reich Capital (Generalbauinspekteur für die Reichshauptstadt), the Defendant Speer.

I think I have named all of the defendants as they appear on this chart, and of those now before Your Honors in this cause I think they all appear on this chart in one capacity or another, in one or more capacities,—all, I might add, except the Defendant Jodl. Jodl was the Chief of Staff of all the Armed Forces. He was the head of the Wehrmacht Führungsstab, and in the chart as evidential material which will be subsequently brought before Your Honors, the name Jodl will figure prominently in connection with the organization of the Armed Forces.

If I may make one correction at this point, a slip of the tongue that was called to my attention, in discussing the chart of the Party, in the small box to the left containing the designates of the Führer to succeed him to the Party leadership, I made the statement that Göring succeeded Hess as Führer-designate. Actually, when the designations were announced by the Führer, Göring was always the first designate, and the Defendant Hess the second.

In Annex A of the Indictment the various offices, Party functions, and State offices which these defendants held in the course of the period under discussion, these various offices are mentioned. And we would like to submit at this time and offer into evidence as exhibits proof of the offices that were occupied by these defendants. This proof consists of 17 statements, more or less, signed by

the defendants themselves and/or their counsel, certifying to the Party and State offices that they have held from time to time. Some of these statements were not as complete as we desired to have them, and we have appended thereto a statement showing such additional offices or proof of Party membership as was available to us. I would like to offer those into evidence.

MR. ALBRECHT: And now, if Your Honors please, I offer into evidence the two charts to which my remarks have been addressed in the course of the morning.

THE PRESIDENT: Will counsel for the United States continue the evidence until half past 12?

COL. STOREY: If Your Honor please, it lacks 2 minutes until half past 12. Mr. Albrecht has finished, and will it be convenient for Your Honors for Major Wallis to start at 2 o'clock?

THE PRESIDENT: Very well.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

COL. STOREY: If the Tribunal please, Major Frank Wallis will now present the briefs and documents supporting the briefs in behalf of the phase of the case known as the Common Plan or Conspiracy, up through 1939.

Major Wallis.

MAJOR FRANK B. WALLIS (Assistant Trial Counsel for the United States): Mr. President, members of the Tribunal:

It will be my purpose to establish most of the material allegations of the Indictment running from Paragraph IV on Page 3, to Subparagraph E on Page 6. The subjects involved are:

The aims of the Nazi Party, their doctrinal techniques, their rise to power, and the consolidation of control over Germany between 1933 and 1939 in preparation for aggressive war.

This story has already been sketched by the American Chief Prosecutor. Moreover, it is history, beyond challenge by the defendants. For the most part, we rely upon the Tribunal to take judicial notice of it. What we offer is merely illustrative material—including statements by the defendants and other Nazi leaders—laws, decrees, and the like. We do not need to rest upon captured documents or other special sources, although some have been used.

For the convenience of the court and Defense counsel, the illustrative material has been put together in document books, and the arguments derived from them have been set out in trial briefs.

I intend only to comment briefly on some of the materials and to summarize the main lines of the briefs.

What is the charge in Count One?

The charge in Count One is that the defendants, with divers other persons, participated in the formulation or execution of a Common Plan or Conspiracy to commit, or which involved the commission of Crimes against Humanity (both within and without Germany), War Crimes, and Crimes against Peace.

The charge is, further, that the instrument of cohesion among the defendants, as well as an instrument for the execution of the purposes of the conspiracy, was the Nazi Party, of which each defendant was a member or to which he became an adherent.

The scope of the proof which I shall offer is:

First, that the Nazi Party set for itself certain aims and objectives, involving basically the acquisition of "Lebensraum", or living space, for all "racial" Germans.

Second, that it was committed to the use of any methods, whether or not legal, in attaining these objectives, and that it did in fact use illegal methods.

Third, that it put forward and disseminated various lines of propaganda, and used various propaganda techniques to assist it in its unprincipled rise to power.

Fourth, that it ultimately did seize all governmental power in Germany.

Fifth, that it used this power to complete the political conquest of the State, to crush all opposition, and to prepare the nation psychologically and otherwise for the foreign aggression upon which it was bent from the outset.

In general we undertake to outline, so far as relevant to the charge, what happened in Germany during the pre-war period, leaving it to others to carry the story and proof through the war years.

The aims of this conspiracy were open and notorious. It was far different from any other conspiracy ever unfolded before a court of justice, not only because of the gigantic number of people involved, the period of time covered, the magnitude and audacity of it, but because, unlike other criminal conspirators, these conspirators often boastfully proclaimed to the world what they planned to do, before they did it.

As an illustration, Hitler, in his speech of 30 January 1941, said:

> "My program was to abolish the Versailles Treaty. It is futile nonsense for the rest of the world to pretend today that I did not reveal this program until 1933 or 1935 or 1937. Instead of listening to the foolish chatter of emigres, these gentlemen would have been wiser to read what I have written thousands of times. No human being has declared or recorded what he wanted more than I. Again and again I wrote these words, 'The abolition of the Treaty of Versailles'."

First, a brief reference to the history of the Nazi Party.

The Court will no doubt recollect that the National Socialist Party had its origin in the German Labor Party, which was founded on 5 January 1919 in Munich. It was this organization which Hitler joined as seventh member on 12 September 1919. At a meeting of the German Labor Party held on 24 February 1920, Hitler announced to the world the "25 Theses" that subsequently became known as the "unalterable" program of the National Socialist German Workers Party.

A few days later, on 4 March 1920, the name of the German Labor Party was changed to the "National Socialist German Workers Party," frequently referred to as the NSDAP, or Nazi Party. It is under that name that the Nazi Party continued to

exist until its dissolution after the collapse and unconditional surrender of Germany in 1945.

The disagreements and intrigues within the Party between Hitler's followers and those who opposed him were finally resolved on 29 July 1921, when Hitler became "First Chairman" and was invested with extraordinary powers. Hitler immediately reorganized the Party and imposed upon it the Führerprinzip — the leadership principle — of which you will hear more later. Thereafter Hitler, the Führer, determined all questions and made all decisions for the Party.

The main objectives of the Party, which are fastened upon the defendants and their co-conspirators by reason of their membership in, or knowing adherence to the Party, were openly and notoriously avowed. They were set out in the Party program of 1920, were publicized in *Mein Kampf* and in Nazi literature generally, and were obvious from the continuous pattern of public action of the Party from the date of its founding.

Now two consequences, of importance in the Trial of this case, derive from the fact that the major objectives of the Party were publicly and repeatedly proclaimed:

First, the Court may take judicial notice of them.

Second, the defendants and their co-conspirators cannot be heard to deny them or to assert that they were ignorant of them.

The Prosecution offers proof of the major objectives of the Party — and hence of the objectives of the conspiracy — only to refresh or implement judicial recollection. The main objectives were:

First, to overthrow the Treaty of Versailles and its restrictions on military armament and activity in Germany;

Second, to acquire territories lost by Germany in World War I;

Third, to acquire other territories inhabited by so-called "racial Germans";

and

Fourth, to acquire still further territories said to be needed as living space by the racial Germans so incorporated—all at the expense of neighboring and other countries.

In speaking of the first aim, Hitler made an admission which applied equally to the other aims, namely, that he had stated and written a thousand times or more that he demanded the abolition of the Versailles Treaty.

These aims are fully documented in the evidence offered by the Prosecution on this phase of the case, and it is not my purpose at this time to recite to the Court numerous declarations made by the defendants and others with respect to these aims.

Moreover, these conspirators again and again publicly announced to the still unbelieving world that they proposed to accomplish these objectives by any means found opportune, including illegal means and resort to threat of force, force, and aggressive war. The use of force was distinctly sanctioned, in fact guaranteed, by official statements and directives of the conspirators which made activism and aggressiveness a political quality obligatory for Party members. As Hitler stated in *Mein Kampf:*

"What we needed and still need are not a hundred or two hundred reckless conspirators, but a hundred thousand and a second hundred thousand fighters for our philosophy of life."

In 1929 Hitler stated:

"We confess further that we will tear anyone to pieces who would dare hinder us in this undertaking. Our rights will be protected only when the German Reich is again supported by the point of the German dagger."

Hitler, in 1934, addressing the Party Congress at Nuremberg, stated the duties of Party members in the following terms:

"Only a part of the people will consist of really active fighters. It is they who were fighters of the National Socialist revolution. Of them, more is demanded than of the millions among the rest of the population. For them it is not sufficient to confess, 'I believe', but to swear, 'I fight'."

In proof of the fact that the Party was committed to the use of any means, whether or not legal or honorable, it is only necessary to remind the Court that the Party virtually opened its public career by staging a revolution — the Munich Putsch of 1923.

Now let us consider for a moment the doctrinal techniques of the Common Plan or Conspiracy which are alleged in the Indictment.

To incite others to join in the Common Plan or Conspiracy and as a means of securing for the Nazi conspirators the highest degree of control over the German community, they disseminated and exploited certain doctrines.

The first of these was the "master race" doctrine—that persons of so-called "German blood" were a master race. This doctrine of racial supremacy was incorporated as Point 4 in the Party program, which provided:

"Only a member of the race can be a citizen. A member of the race can only be one who is of German blood without consideration of confession. Consequently, no Jew can be a member of the race."

They outlined this master race doctrine as a new religion — the faith of the blood — superseding in individual allegiance all other religions and institutions. The Defendant Rosenberg and the Defendant Streicher were particularly prominent in disseminating this doctrine. Much of the evidence to be offered in this case will illustrate the Nazi conspirators' continued espousal and exploitation of this master race doctrine.

This doctrine had an eliminatory purpose. Call anything "non-German" or Jewish, and you have a clear right, indeed a duty, to cast it out. In fact purges did not stop at so-called racial lines, but went far beyond.

The second important doctrine which permeates the entire conspiracy and is one of the important links in establishing the guilt of each of these defendants is the doctrine or concept of the Führerprinzip, or leadership principle.

This doctrine permeated the Nazi Party and all its formations and allied organizations and eventually permeated the Nazi State and all institutions, and is of such importance that I would like to dwell upon it for a few moments and attempt to explain the concepts which it embraces.

The Führerprinzip embodies two major political concepts:

1. Authoritarianism;

2. Totalitarianism.

Authoritarianism implies the following: All authority is concentrated at the top and is vested in one person only, the Führer. It further implies that the Führer is infallible as well as omnipotent. The Party manual states:

"Under the Commandments of the National Socialists: The Führer is always right...."

Also, there are no legal or political limits to the authority of the Führer. Whatever authority is wielded by others is derived from the authority of the Führer. Moreover, within the sphere of jurisdiction allotted to him, each appointee of the Führer manipulates his power in equally unrestricted fashion, subordinate only to the command of those above him. Each appointee owes unconditional obedience to the Führer and to the superior Party leaders in the hierarchy.

Each Political Leader was sworn in yearly. According to the Party manual, which will be introduced in evidence, the wording of the oath was as follows:

> "I pledge eternal allegiance to Adolf Hitler. I pledge unconditional obedience to him and the Führer appointed by him."

The Party manual also provides that:

"The Political Leader is inseparably tied to the ideology and the organization of the NSDAP. His oath only ends with his death or with his expulsion from the National Socialist Community."

As the Defendant Hans Frank stated in one of his publications:

"Leadership principle in the administration means:

"Always to replace decision by majority, by decision on the part of a specific person with clear jurisdiction and with sole responsibility to those above, and to entrust to his authority the realization of the decision to those below."

And finally the concept of authoritarianism contained in the Führerprinzip implies: The authority of the Führer extends into all spheres of public and private life.

The second main concept of the Führerprinzip is totalitarianism which implies the following:

The authority of the Führer, his appointees, and through them, of the Party as a whole, extends into all spheres of public and private life.

The Party dominates the State.

The Party dominates the Armed Forces.

The Party dominates all individuals within the State.

The Party eliminates all institutions, groups, and individuals unwilling to accept the leadership of its Führer.

As the Party manual states:

"Only those organizations can lay claim to the institution of the leadership principle and to the National Socialist meaning of the State and people in the National Socialist meaning of the term, which... have been integrated into, supervised and formed by the Party and which, in the future, will continue to do so."

The manual goes on to state:

"All others which conduct an organizational life of their own are to be rejected as outsiders and will either have to adjust themselves or disappear from public life."

Illustrations of the Führerprinzip and its application to the Party, the State and allied organizations are fully set forth in the brief and accompanying documents, which will be offered in evidence.

The third doctrine or technique employed by the Nazi conspirators to make the German people amenable to their will and aims was the doctrine that war was a noble and necessary activity of Germans. The purpose of this doctrine was well expressed by Hitler in *Mein Kampf* when he said:

"The question of restoration of German power is not a question of how to fabricate arms, but a question of how to create the spirit which makes a people capable of bearing arms. If this spirit dominates a people, the will finds a thousand ways to secure weapons."

Hitler's writings and public utterances are replete with declarations rationalizing the use of force and glorifying war. The following is typical, when he said:

"Always before God and the world, the stronger has the right to carry through his will. History proves it! He who has no might has no use for right."

As will be shown in subsequent proof, this doctrine of the glorification of war played a major part in the education of the German youth of the pre-war era.

I now offer the documents which establish the aims of the Nazi Party and their doctrinal techniques. I also have for the assistance of the Court and Defense Counsel, briefs which make the argument from these documents.

I now direct your attention to the rise to power of the Nazi Party.

The first attempt to acquire political control was by force. In fact at no time during this period did the Party participate in any electoral campaigns, nor did it see fit to collaborate with other political...

THE PRESIDENT: Major Wallis, have you got copies of these for defendants' counsel?

MAJOR WALLIS: In Room 54, Sir.

THE PRESIDENT: Well, they will be wanting to follow them now.

MAJOR WALLIS: Mr. President, my remarks, which I am proceeding toward, will cover an entirely different subject than in the briefs before you. The briefs cover what I have already said, Sir.

THE PRESIDENT: Are you depositing a copy of these briefs for each of the defendants' counsel?

MAJOR WALLIS: I am informed, if Your Honor pleases, that the same procedure has been followed with respect to these briefs as has been followed with respect to the documents, namely, a total of six has been made available to the defendants in Room 54. If Your Honor does not deem that number sufficient, I feel sure that I can give assurance, on behalf of the Chief Prosecutor of the United States, that before the close of the day an ample supply of copies will be there for use.

THE PRESIDENT: The Tribunal thinks that the Defense Counsel should each have a copy of these briefs.

MAJOR WALLIS: That will be done, Sir.

THE PRESIDENT: Members of the Defense Counsel: You will understand that I have directed on behalf of the Tribunal that you should each have a copy of this brief.

DR. DIX: We are very grateful for this directive, but none of us has seen any of these documents so far. I assume and hope that these documents will be given to the Defense in the German translation.

THE PRESIDENT: Yes, Major Wallis.

MAJOR WALLIS: I now direct your attention to the rise to power of the Nazi Party.

The 9th of November 1923 warranted the end as well as the beginning of an era. On the 9th of November occurred the historical fact popularly known as the Hitler Putsch. During the night of November 8th to 9th Hitler, supported by the SA under the Defendant Göring, at a meeting in Munich, proclaimed the National Revolution and his dictatorship of Germany, and announced himself as the Chancellor of the Reich. On the following morning the duly constituted authorities of the State, after some bloodshed in Munich, put an end to this illegal attempt to seize the Government. Hitler and some of his followers were arrested and tried, and sentenced to imprisonment.

The new era in the National Socialist movement commences with Hitler's parole from prison in December 1924. With the return of its leader, the Party took up its fight for power once again. The prohibitions invoked by the Government against the Nazi Party at the time of the Munich Putsch gradually were removed and Hitler the Führer of the Party, formally announced that in seeking to achieve its aims to overthrow the Weimar Government, the Party would resort only to "legal" means. A valid inference from these facts may well be suggested, namely that the Party's resort to "legality" was in reality only a condition on which it was permitted to carry on its activities in a democratically organized state. But consistent with its professed resort to "legality", the Party now participated in the popular elections of the German people and generally took part in political activity. At the same time it engaged in feverish activity to expand the Party membership, its organizational structure and activities. The SA and the SS recruited numerous new members. Hitler's *Mein Kampf* appeared in 1925. The Hitler Youth was founded. Newspapers were published, among them the *Völkischer Beobachter* of

which the Defendant Rosenberg was editor, and *Der Angriff* published by Goebbels, later the notorious Minister of Propaganda and Public Enlightenment. Meetings of other political parties were interfered with and broken up, and there was much street brawling.

The results of the Party's attempt to win political power made little headway for a number of years, despite the strenuous efforts exerted to that end. In 30 elections in which the National Socialists participated from 1925 to 1930 for seats in the Reichstag and in the Landtage or Provincial Diets of the various German states, the Nazis received mandates in but 16 and gained no seats at all in 14 elections. The National Socialist vote in the 1927 elections did not exceed 4 per cent of the total number of votes cast. The year 1929 marks the first modest success at the polls in the State of Thuringia. The Nazi received over 11 per cent of the popular vote, elected 6 representatives out of the total of 53 to the Diet, and the Defendant Frick became Minister of Interior of Thuringia, the first National Socialist chosen to ministerial rank.

With such encouragement and proof of the success of its methods to win support, the Nazi Party redoubled its traditional efforts (by means of terror and coercion). These met with some rebuff on the part of the Reich and various German states. Prussia required its civil servants to terminate their membership in the Party and forbade the wearing of brown shirts, which were worn by the SA of the Party. Baden likewise ruled against the wearing of brown shirts, and Bavaria prohibited the wearing of uniforms by political organizations. New National Socialist writings appeared in Germany. The new *National Socialist Monthly* appeared under the editorship of the Defendant Rosenberg, and shortly thereafter, in June 1930, Rosenberg's *Myth of the 20th Century* was published.

Against this background — President Von Hindenburg having meanwhile dissolved the Reichstag when Chancellor Brüning failed to obtain a vote of confidence — Germany moved to the polls once more on the 14th September 1930. By this election their representation in the Reichstag was increased from 12 seats to 107 seats out of a total of 577.

The new Reichstag met and 107 Nazis marched into the session dressed in brown shirts. Rowdy opposition at once developed, intent on causing the fall of the Brüning Cabinet. Taking advantage of the issues caused by the then prevailing general economic distress, the Nazis sought a vote of non-confidence and dissolution of the Reichstag. Failing in these obstructionary tactics, the Nazis walked out on the Reichstag.

With 107 members in the Reichstag the Nazi propaganda increased in violence. The obstruction by the Nazi deputies of the Reichstag continued with the same pattern of conduct. Repeatedly motions of non-confidence in Brüning and for dissolution of the Reichstag were offered and were lost. And after every failure the Nazi members stalked out of the chamber anew.

By spring of 1932, Brüning's position became untenable and the Defendant Von Papen was appointed Chancellor. The Reichstag was dissolved and new elections held in which the Nazis increased the number of their seats to 230 out of a total of 608. The Nazi Party was becoming a strong party in Germany, but it had failed to become the majority party. The obstructive tactics of the Nazi deputies in the Reichstag continued, and by the fall of 1932 Von Papen's Government was no longer able to continue. President Von Hindenburg again dissolved the Reichstag, and in the new elections of November the Nazi representation in the Reichstag actually decreased to 196 seats. The short-lived Von Schleicher Government then came into being — it was the 3rd December 1932 — and by the end of January 1933 it went out of existence. With the support of the Nationalist Party under Hugenberg and other political assistance, Hitler became Chancellor of Germany by designation of Von Hindenburg.

That is the end of the prologue, as it were, to the dramatic and sinister story that will be developed by the Prosecution in the course of this Trial. Let it be noted here, however, and remembered, as the story of the misdeeds and crimes of these defendants and their fellow conspirators are exposed, that at no time in the course of their alleged "legal" efforts to gain possession of the State, did the conspirators represent a majority of the people.

Now it is commonly said that the Nazi conspirators "seized control" when Hitler became Chancellor of the German Republic on 30 January 1933. It may be more truly said that they seized control upon securing the passage of the Law for the Protection of the People and the State on 24 March 1933. The steps leading to this actual seizure of power are worthy of recital. The Nazi conspirators were fully cognizant of their lack of control over the legislative powers of the republic. They needed, if they were to carry out the first steps of their grand conspiracy under the cloak of law, an enabling act which would vest supreme legislative power in Hitler's Cabinet, free from all restraints of the Weimar constitution. Such an enabling act however required a change in the constitution which, in turn, required two-thirds of the regular members of the Reichstag to be present, and at least two-thirds of the votes of those present.

The time-table of events leading up to the passage of this enabling act, known as the Law for the Protection of the People and the State, is as follows:

1. On January 30th, 1933 Hitler held his first Cabinet meeting and we have the original minutes of that meeting, which will be offered in evidence. The Defendants Von Papen, Von Neurath, Frick, Göring, and Funk were present. According to the minutes of this meeting, Hitler pointed out that the adjournment of the Reichstag would be impossible without the collaboration of the Center Party. He went on to say:

"We might, however, consider suppressing the Communist Party to eliminate its votes in the Reichstag and by this measure achieve a majority in the Reichstag."

He expressed the fear, however, that this might result in a general strike. The Reich Minister of Economy, according to these official minutes, stated that in his opinion, it was impossible to avoid the suppression of the Communist Party of Germany, for, if that were not done they could not achieve a majority in the Reichstag, certainly not a majority of two-thirds; that, after the suppression of the Communist Party, the passage of an enabling act through the Reichstag would be possible. The Defendant Frick suggested that it would be best initially to request an enabling law from the Reichstag. At this meeting Hitler agreed to contact representatives of the Center Party the next morning to see what could be done by way of making a deal with them.

2. The next event in this time-table was the Reichstag fire on the 28th of February 1933.

3. Taking advantage of the uncertainty and unrest created by the Reichstag fire, and the disturbances being created by the SA, the provisions of the Weimar constitution guaranteeing personal freedom, and other personal liberties were suspended by a decree of the Reich President on February 28, 1933.

Then on 5th of March 1933, elections to the Reichstag were held. The Nazis acquired 288 seats out of a total of 647.

On the 15th of March 1933, another meeting of the Reich Cabinet was held, and we also have the original official minutes of that meeting which bears the initials, opposite their names, of the defendants who were present at that meeting, signifying that they have read — I contend that it is a reasonable inference to state that it signifies that they read these minutes and approved them. The following defendants were present at this meeting: Von Papen, Von Neurath, Frick, Göring, and Funk. At this meeting, according to these official minutes Hitler stated that the putting over of the enabling act in the Reichstag by a two-thirds vote would, in his

opinion, meet with no opposition. The Defendant Frick pointed out that the Reichstag had to ratify the enabling act with a constitutional majority within three days, and that the Center Party had not expressed itself negatively. He went on to say that the enabling act would have to be broadly conceived in a manner to allow for deviation from the provisions of the Constitution of the Reich. He further stated that as far as the constitutional requirements of a two-thirds majority was concerned, a total of 432 delegates would have to be present for the ratification of the enabling act. The Defendant Göring expressed his conviction at this meeting that the enabling act would be ratified with the required two-thirds vote for, if necessary, the majority could be obtained by refusing admittance to the Reichstag of some Social Democrats.

Now on the 20th of March another Cabinet meeting was held, and we also have the official, original records of this meeting which will be offered in evidence. The Defendants Frick, Von Papen, Von Neurath, Göring, and Funk were present. The proposed enabling act was again the subject of a discussion. Hitler reported on the conference he had completed with the representatives of the Center Party. The Defendant Neurath proposed a note concerning the arrangement to be agreed to by the representatives of the Center Party. The Defendant Frick expounded to the meeting the contents of the draft of the proposed law, and further stated that changes in the standing orders or rules of the Reichstag were also necessary, that an explicit rule must be made that unexcused absent delegates be considered present, and if that was done it would probably be possible to ratify the enabling act on the following Thursday in all three readings.

It is interesting to note that among the things recorded in the official minutes of this Cabinet meeting was the Defendant Göring's announcement that he had ordered SA troops on the Polish border to be cautious and not to show themselves in uniform, and that the Defendant Neurath recommended also that the SA be cautious, especially in Danzig. In addition, the Defendant Neurath pointed out that Communists in SA uniforms were being caught continuously. These stool pigeons had to be hanged. Justice had to find means and ways to make possible such punishment for Communist stool pigeons, according to the Defendant Neurath.

On 14th March 1933 the Defendant Frick announced:

"When the Reichstag meets the 21st of March, the Communists will be prevented by urgent labor elsewhere from participation in the session. In concentration camps they will be re-educated for productive work. We will know how to ren-

der harmless permanently, sub-humans who don't want to be re-educated."

During this period, taking advantage of the decree suspending constitutional guarantees of freedom, a large number of Communists, including Party officials and Reichstag deputies, and a smaller number of Social Democrat officials and deputies, were placed in protective custody. On 23 March 1933, in urging the passage of the enabling act, Hitler stated before the Reichstag:

"It is up to you gentlemen, to make the decision now. It will be for peace or war."

On 24 March 1933 only 535 out of the regular 747 deputies of the Reichstag were present. The absence of some was unexcused; they were in protective custody in concentration camps. Subject to the full weight of the Nazi pressure and terror, the Reichstag passed an enabling act known as the "Law for the Protection of the People and State," with a vote of 441 in favor. This law marks the real seizure of political control by the conspirators. Article 1 provided: that the Reich laws can be enacted by the Reich Cabinet. Article 2 provided: the National laws enacted by the Reich Cabinet may deviate from the constitution. Article 3 provided: National Laws enacted by the Reich Cabinet are prepared by the Chancellor and published in the Reichsgesetzblatt. Article 4 provided: Treaties of the Reich with foreign states, which concern matters of national legislation, do not require the consent of the parties participating in legislation. The Reich Cabinet is empowered to issue the necessary provisions for the execution of these treaties.

Thus the Nazis acquired full political control, completely unrestrained by any provision of the Weimar constitution.

I now offer the documents which establish the facts which I have just stated, and I also present, for the assistance of the Court and the Defense Counsel, the briefs covering this portion of the case.

THE PRESIDENT: I wish to speak to Major Wallis. Would it be possible for the Prosecution to let defendants' counsel have at least one copy between each two of them here in court? If not today, then tomorrow?

COL. STOREY: If the Tribunal please, there has been some misunderstanding and the briefs were delivered to the Defendants' Document Room. We have sent for some of them and they should be here shortly. However, Sir, in all fairness the briefs themselves are not in the German language, because we had intended to take the trial brief and the lawyers follow it over the translating system and thus, when it was finished, it would be translated into all languages.

However, in order to shorten the proceeding, Major Wallis has made a summary, and he is giving the summary and will offer the documents in evidence and later the briefs, as needed, to the Tribunal, and to Defense Counsel, and unfortunately, in the rush of time, they have been put down in the Defendants' Document Room and we have sent for some of them. We understand, also, if the Tribunal please, that Dr. Kempner approached some of the distinguished counsel for the Defense, and learned that a great many of them not only speak English, but understand it when they read it, and to save the tremendous physical burden on facilities, the briefs have not, as yet, been translated into German. If there is objection, the only thing we can do is to withhold them at this time, but we understood it would be agreeable to pass them to them in English, and that is what we propose to do at the present moment, and have German speaking officers in the Document Room who will translate for any of them who may not be able to read German — pardon me, to read English.

DR. DIX: I have one request. We are here, as German Defense Counsel, and in face of great difficulties. These proceedings are conducted according to Anglo-American customs. We are doing our best to make our way through these principles, and would be very grateful if the President would take into consideration our difficult situation.

I have heard — I am not quite sure if it was right — that according to these Anglo-American principles, it is necessary to prepare objections immediately, if one has any objections to the contents of a document, and that this is not possible unless one does it at once. This is a point on which I would like to make my request. I am convinced that both the trial brief and the documents will be made available to us, and we will see if we can have a German translation of one or the other. If this trouble can be spared, if the Defense Counsel needs a translation, we shall have it, but I should like — I have one request — that we have leisure to raise an objection later when we have had a chance to discuss it. I think in that way we shall easily overcome the difficulties raised by the present situation, and we are trying to cooperate in order to overcome any difficulties.

THE PRESIDENT: The Tribunal is glad that defendants' counsel are making efforts to cooperate in the Trial. After the adjournment, the Tribunal will consider the best method of providing defendants' counsel with as many translations as possible, and you are right in thinking that you will be able to make objections to any document after you have had time to consider it.

DR. DIX: Thank you, Sir.

MAJOR WALLIS: Having acquired full political control, the Nazi conspirators now proceeded to consolidate their power, and at this point I would like to impress upon the Tribunal once again that with the exception of a very few documents, the subject matter of my remarks is within the purview of judicial notice of the Court, a matter of history well known to these defendants and their counsel. Their first step in the consolidation of power was ruthlessly to purge their political opponents by confining them to concentration camps or by murder. Concentration camps made their first appearance in 1933 and were first used as means of putting political opponents out of circulation by confining them to a so-called "protective custody." This system of concentration camps grew and expanded within Germany. At a subsequent stage in these proceedings full and complete evidence of the concentration camp system and the atrocities committed therein will be presented to the Court, both by documents and films.

Illustrative documentary evidence of the arrest, mistreatment, and murder by the Nazi conspirators of their political opponents is contained in the documentary evidence offered by the United States.

As an illustration, affidavit of Raymond H. Geist, former American Consul and First Secretary of the Embassy in Berlin from 1929 to 1938, states (which will be offered):

"Immediately in 1933, the concentration camps were established and put under charge of the Gestapo. Only political prisoners were held in concentration camps.

"The first wave of terroristic acts began in March 1933, more particularly from March 6 to 13, 1933, accompanied by unusual mob violence. When the Nazi Party won the elections in March 1933, the accumulated passion blew off in wholesale attacks on the Communists, Jews, and others suspected of being either. Mobs of SA men roamed the streets, beating up, looting and even killing persons.

"For Germans taken into custody by the Gestapo there was a regular pattern of brutality and terror. All over Germany victims were numbered by the hundred thousand."

On the 30th of June and 1 and 2 July 1934 the conspirators proceeded to destroy opposition within their own ranks by wholesale murder. In discussing this purge, the Defendant Frick stated, in an affidavit under oath, signed on the 19th day of November 1945, in the presence of his Defense Counsel, as follows. This is document number 2950-PS. It has not yet been introduced in evidence, Sir:

"Himmler, in June of 1934, was able to convince Hitler that Röhm wanted to start a Putsch. The Führer ordered Himmler to suppress the Putsch which was supposed to take place at the Tegernsee, where all of the SA leaders were coming together. For northern Germany, the Führer gave the order to suppress the Putsch to Göring."

Frick goes on to say:

"Pursuant to this order, a great many people were arrested and something like a hundred, and possibly more, were even put to death, accused of high treason; all this was done without judicial process." They were just killed on the spot. Many people were killed — I don't know how many — who actually did not have anything to do with the Putsch. People who just weren't liked very well as, for instance, Schleicher, the former Reich Chancellor, were killed. Schleicher's wife was also killed. Also Gregor Strasser, who had been the Reich Organization Leader and second man in the Party after Hitler. Strasser, at the time he was murdered, was not active in political affairs any more; he had however separated himself from the Führer in November or December of 1932".

Frick goes on to say:

"The SS was used by Himmler for the execution of these orders to suppress the Putsch."

During this period the conspirators created, by a series of decrees of the Reich Cabinet, a number of new political crimes. Any act or statement contrary to the Nazi Party was deemed to be treason and punished accordingly. The formations of the Party, the SA, SS, as well as the SD and the Gestapo, were the vicious tools used in the extermination of all opposition, real or potential. As the Defendant Göring said on July 24th, 1933 — I refer to Document Number 2494-PS, which will be introduced in evidence:

"Whoever in the future raises a hand against a representative of the National Socialist movement or of the State, must know that he will lose his life in a very short while. Furthermore, it will be entirely sufficient, if he is proven to have intended the act, or, if the act results not in a death, but only in an injury."

The Defendant Frank stated, in a magazine of the Academy for German Law, 1936, which will be introduced as Document Number 2533-PS, as follows:

"By the world we are blamed again and again because of the concentration camps. We are asked, 'Why do you arrest without a warrant of arrest?' I say, 'Put yourself into the position of our nation.' Don't forget that the very great and still un-

touched world of Bolshevism cannot forget that we have made final victory for them impossible in Europe, right here on German soil."

And Raymond Geist, whose affidavit I previously referred to, being Document Number 1759-PS, states:

"The German people were well-acquainted with what was happening in concentration camps, and it was well known that the fate of anyone too actively opposed to any part of the Nazi program was liable to be one of great suffering. Indeed, before the Hitler regime was many months old, almost every family in Germany had received first-hand accounts of the brutalities inflicted in the concentration camps from someone, either in the family circle or in the circle of friends who had served a sentence, and consequently the fear of such camps was a very effective brake on any possible opposition."

And as the Defendant Göring said in 1934, — and I refer to Document Number 2344-PS, which will be offered in evidence:

"Against the enemies of the State, we must proceed ruthlessly... therefore the concentration camps have been created, where we have first confined thousands of Communist and Socialist Democrat functionaries."

In addition to ruthlessly purging all political opponents, the Nazi conspirators further consolidated their position by promptly proceeding to eliminate all other political parties. On 21 March 1933, the Defendant Frick announced that the Communists would be prevented from taking part in the Reichstag proceedings. This was accomplished, as has been pointed out, by placing them in "protective custody in concentration camps." On the 26th May 1933 a Reich Cabinet decree, signed by Hitler and the Defendant Frick, provided for the confiscation of the Communist property. On 22 June 1933 the Social Democratic Party was suppressed in Prussia, it previously having been seriously weakened by placing a number of its members in concentration camps. On the 7th of July 1933 a Reich decree eliminated Social Democrats from the Reichstag and from the governing bodies of the provinces and municipalities. On the 14 of July 1933, by a decree of the Reich Cabinet, the property of the Social Democrats was confiscated, and the Nazi Party was constituted as the sole political party in Germany, and thereupon it became illegal to maintain or to form any other political party. Thus, Hitler was able to say within hardly more than 5 months after becoming Chancellor, I quote: "The Party has become the State."

The Nazi conspirators immediately proceeded to make that statement a recorded fact, for on the 1st of December 1933 the Reich

Cabinet issued a law for "Securing the Unity of Party and State." This law was signed by Hitler and the Defendant Frick.

Article 1 provided that the Nazi Party:

"... is the bearer of the concept of the State and is inseparably the State. It will be a part of the public law. Its organization will be determined by the Führer."

Article 2 provided:

"The Deputy of the Führer and the Chief of Staff of the SA will become members of the Reich Cabinet in order to insure close cooperation of the offices of the Party and SA with public authorities."

Article 3 provided:

"The members of the National Socialist German Workers Party and the SA (including their subordinate organizations) as the leading and driving force of the National Socialist State will bear greater responsibility toward Führer, People, and State."

[A recess was taken.]

COL. STOREY: During the recess defendants' counsel and the Prosecution arrived at an agreement for the furnishing of briefs to the defendants, which I understand to be this:

Copies of the documents offered in evidence in German will be delivered in the Defendants' Information Center, with the understanding that if any Defense Counsel needs to show the German photostatic copy to his client he may do so in the defendants' counsel room adjacent thereto; that the briefs which we are passing to the Tribunal as an aid will likewise be passed to defendants' counsel in English, and that if any of them have trouble in the translation of any portion of the briefs, we have German-speaking officers in the Defendants' Information Center who will assist counsel. I understand that all of these defendants' counsel have so agreed.

THE PRESIDENT: Thank you. Now, Major Wallis.

MAJOR WALLIS: May it please the Court, at the moment of recess I was referring to the law which was passed on 1 December 1933, for securing the unity of Party and State.

Article 6 of that law provided:

"The public authorities have to grant legal and administrative assistance to the offices of the Party and the SA which are entrusted with the execution of the jurisdiction of the Party and SA."

Article 8 provided:

"The Reich Chancellor as Führer of the National Socialistic German Workers Party and, as the supreme commander of

the SA, will issue the regulations necessary for the execution and augmentation of this law, particularly with respect to the organization and procedure of the jurisdiction of the Party and SA."

Thus by this law the Nazi Party became a para-governmental organization in Germany.

The further merger of the Party and State occurred on the death of Hindenburg. Instead of holding an election to fill the office of President, the merger of the offices of President and Chancellor, in the person of Hitler, was accomplished by the law of 1 August 1934, signed by the entire Reich Cabinet. One of the significant consequences of this law was to give to Hitler the supreme command of the German Armed Forces, always a prerequisite of the presidency, and every soldier was immediately required to take an oath of loyalty and unconditional obedience to Hitler. On 4 February 1938 Hitler issued a decree which stated in part — and I quote from Document Number 1915-PS, which will be offered in the document book at the close of my remarks — as follows: "From now on, I take over directly the command of the whole Armed Forces."

As a further step in the consolidation of their political control, the Nazi conspirators reduced national elections to mere formalities devoid of the element of freedom of choice. Elections, properly speaking, could not take place under the Nazi system. In the first place, the basic doctrine of the Führerprinzip dictated that all subordinates must be appointed by their superiors in the Government hierarchy. Although it had already become the practice, in 1938 it was specifically provided by law that only one list of candidates was to be submitted to the people. By the end of this pre-war period little of substance remained in the election law. The majority of the substantive provisions had become obsolete.

By a series of laws and decrees the Nazi conspirators reduced the powers of regional and local governments and substantially transformed them into territorial subdivisions of the Reich Government. With the abolition of representative assemblies and elective officials in the Länder and the municipalities, regional and local elections ceased to exist. On 31 January 1934 the last vestiges of Land independence was destroyed by the Law for the Reconstruction of the Reich. The Defendant Frick, Minister of the Interior throughout this period, has written of this Law for the Reconstruction of the Reich as follows:

"The reconstruction law abolished the sovereign rights and executive powers of the Länder and made the Reich the sole bearer of the rights of sovereignty. The supreme powers of the Länder do not exist any longer. The natural result of this

was the subordination of the Land government to the Reich Government and the Land ministers to the corresponding Reich ministers. On 30 January, 1934 the German Reich became one state."

Another step taken by the Nazi conspirators in consolidating their political power was the purge of civil servants on racial and political grounds and their replacement by Party members and supporters. This purge was accomplished through a series of Nazi laws and decrees. The first was on 7 April 1933, entitled: "Law for the Restoration of the Professional Civil Service." Article 3 of the law applied the Nazi blood and master race theories in providing that officials who were not of Aryan descent were to be retired. The political purge provision of the law is contained in Article 4, and I quote:

"Officials who, because of their previous political activities, do not offer security that they will assert themselves for the National State without reservations may be dismissed."

The effect of this law and the decrees and regulations issued thereunder was to fill every responsible position in the Government with a Nazi and to prevent the appointment of any applicant opposed, or suspected of being opposed, to the Nazi program and policy.

Even the judiciary did not escape the purge of the Nazi conspirators. All judges who failed to fulfill the racial and political requirements of the conspirators were quickly removed. In addition, the Nazis set up a new system of special criminal courts independent of the regular judiciary and directly subservient to the Party program. Moreover, the Nazis controlled all judges through special directives and orders from the central Government, their aim being, as expressed by one Gerland, one of the leading Nazi lawyers of that time: ". . . to make the word 'terrorization' in the penal law respectable again."

As their control was consolidated, the conspirators greatly enlarged existing State and Party organizations and established an elaborate network of new formations and agencies. The Party spread octopus-like throughout all of Germany. This process of growth was summed up late in 1937 in an official statement of the Party Chancellery, as follows:

"In order to control the whole German nation in all spheres of life" — and I repeat, in order to control the whole German nation in all spheres of life—"the NSDAP, after assuming power, set up under its leadership, the new Party formations and affiliated organizations."

At this point I would like to offer to the Court the document book which contains the laws and conditions which I have referred to in this part of my presentation together with the briefs covering this part of it.

Labor unions:

I would like to direct the Tribunal's attention to some case histories in the consolidation of control by the conspirators.

The first case history in the consolidation of the Nazi conspirators' control of Germany is the destruction of the free trade unions and the obtaining of control over the productive labor capacity of the German nation.

The position of organized labor in Germany, at the time of the Nazi seizure of power, the obstacles they afforded to the Nazi plans, the speed with which they were destroyed, the terror and maltreatment ranging from assault to murder of union leaders, were fully outlined in the opening address of the Chief Prosecutor of the United States, and are fully set forth in the document book which I will present to the Court on this phase of the case.

The result achieved by the Nazi conspirators is best expressed in the words of Robert Ley. Ley's confidence in the Nazis' effective control over the productive labor capacity of Germany in peace or in war was declared as early as 1936 to the Nuremberg Party Congress. I refer to Document 2283-PS which is included in the document book which will be presented on this phase of the case. He stated:

> "The idea of the factory troops is making good progress in the plants, and I am able to report to you, my Führer, that security and peace in the factories has been guaranteed, not only in normal times, but also in times of the most serious crisis. Disturbances, such as the munitions strikes of the traitor Ebert and confederates, are out of the question. National Socialism has conquered the factories. Factory troops are the National Socialist shock troops within the factory, and their motto is: The Führer is always right."

At this time I would like to offer to the Court the document book containing the documents on this phase of the case, namely, "The destruction of labor unions and the gaining of control of all productive labor in Germany," together with the brief on that subject. At the same time, if it please the Court, I would like to offer the document book concerning the consolidation of control with respect to the utilization and molding of political machinery, which is, in law, a decree which I referred to just prior to my discussion of the destruction of labor unions.

I would now direct your attention to the second case history in the consolidation of control.

The Nazi conspirators early realized that the influence of the Christian churches in Germany was an obstacle to their complete domination of the German people and contrary to their master race dogma. As the Defendant Martin Bormann stated in a secret decree of the Party Chancellery signed by him and distributed to all Gauleiter on 7 June 1941 — it is identified as Document Number D-75 and will be included in the document book which will be presented to the Court — he stated as follows:

> "More and more must the people be separated from the churches and their organizations and pastors .... Not until this has happened does the State leadership have influence on the individual citizens."

Accordingly, the Nazi conspirators, seeking to subvert the influence of the churches over the people of Germany, proceeded to attempt to eliminate these churches:

1. By promoting beliefs and practices incompatible with Christian teachings.

2. By persecuting priests, clergy, and members of monastic orders. This persecution, as the documentary evidence will show, ran the gauntlet of insults and indignities, physical assault, confinement in concentration camps, and murder.

3. By the confiscation of church properties.

4. By suppressing religious publications.

5. By the suppression of religious organizations. In addition, they also suppressed religious education. This is illustrated by the secret decree of the Party Chancellery which I just referred to in Document D-75, when the Defendant Bormann stated:

> "No human being would know anything of Christianity if it had not been drilled into him in his childhood by his pastors. The so-called "dear God" in no wise gives knowledge of His existence to young people in advance, but in an astonishing manner, in spite of His omnipotence, leaves this to the efforts of the pastors. If, therefore, in the future our youth learns nothing more of this Christianity, whose doctrines are far below ours, Christianity will disappear by itself."

At a subsequent stage in these proceedings, additional documentary evidence of the acts of the conspirators in their attempt to subvert the influence of the Christian churches will be offered. At this time I offer the document book in support of this phase of the case together with the accompanying brief.

We now come to what might be called the third case history, the persecution of the Jews. The Nazi conspirators adopted and publicized a program of ruthless persecution of Jews.

It is not our purpose at this time to present to the Court a full and complete story, in all its sickening details, of the Nazi conspirators' plans and acts for the elimination and liquidation of the Jewish population of Europe. This will be done in due course, at a subsequent stage of these proceedings, but it is our purpose at this time to bring before you, as one of the elements in the Nazi scheme for the consolidation of their control of Germany, the action which was planned and taken with respect to the Jews within Germany during the pre-war period.

As a means of implementing their master race policy and as a means of rallying otherwise discordant elements behind the Nazi banner, the conspirators adopted and publicized a program of relentless persecution of Jews. This program was contained in the official, unalterable 25 points of the Nazi Party, of which 6 were devoted to the master race doctrine. The Defendants Göring, Hess, Rosenberg, Frank, Frick, Streicher, Funk, Schirach, Bormann, and others, all took prominent parts in publicizing this program. Upon the Nazis coming into power, this Party program became the official State program.

The first organized act was the boycott of Jewish enterprises on 1 April 1933. The Defendant Streicher, in a signed statement, admits that he was in charge of this program only for one day. We, of course, reserve the right to show additional evidence with respect to that fact. The Nazi conspirators then embarked upon a legislative program which was gradual and which dates from 7 April 1937 until September 1935. During this period a series of laws was passed removing the Jews from civil service, from the professions and from the schools and military service.

It was clear, however, that the Nazi conspirators had a far more ambitious program for the Jewish problem and only put off its realization for reasons of expediency. After the usual propaganda barrage, in which the speeches and writings of the Defendant Streicher were most prominent, the Nazi conspirators initiated the second period of anti-Jewish legislation, namely, from 15 September 1935 to September 1938. In this period the infamous Nuremberg Laws were passed, depriving the Jews of their rights as citizens, forbidding them to marry Aryans, and eliminating them from additional professions. In the autumn of 1938 the Nazi conspirators began to put into effect a program of complete elimination of the Jews from German life. The measures taken were partly presented as a retaliation against world Jewry in connection

with the killing of a German embassy official in Paris. Unlike the boycott action in April 1933, when care was taken to avoid extensive violence, an allegedly spontaneous pogrom was staged and carried out all over Germany. The legislative measures which followed were discussed and approved in their final form at a meeting on 12 November 1938 under the chairmanship of the Defendant Göring, with the participation of the Defendants Frick and Funk and others. I refer to Document 1816-PS, which will appear in the document book. The meeting was called following Hitler's orders "requesting that the Jewish question be now, once and for all, coordinated and solved one way or the other." The participants agreed on measures to be taken for the elimination of the Jew from German economy. The laws issued in this period were signed mostly by the Defendant Göring in his capacity as Deputy of the Four Year Plan, and were thus strictly connected with the consolidation of control of the German economy and preparation for aggressive war. These laws obliged all German Jews to pay a collective fine of 1 billion Reichsmarks; barred the Jews from trades and crafts; limited movement of Jews to certain localities and hours; limited the time for the sale or liquidation of Jewish enterprises; forced Jews to deposit shares and securities held by them; forbade the sale or acquisition of gold or precious stones by a Jew; granted landlords the right to give notice to Jewish tenants before legal expiration of the leases; and forced all Jews over 6 years of age to wear the Star of David.

In the final period of the anti-Jewish crusade of the Nazi conspirators within Germany, very few legislative measures were passed. The Jews were just delivered to the SS, Gestapo, and the various extermination staffs. The last law dealing with Jews in Germany put them entirely outside the law and ordered the confiscation by the State of the property of dead Jews. This law was a weak reflection of a factual situation already in existence. As Dr. Stuckart, assistant to the Defendant Frick, stated at the time:

> "The aim of the racial legislation may be regarded as already achieved and consequently the racial legislation as essentially closed. It led to the temporary solution of the Jewish problem and at the same time essentially prepared for the final solution. Many regulations will lose their practical importance as Germany approaches the achievement of the final goal on the Jewish problem."

Hitler, on January 30, 1939, in a speech before the Reichstag, made the following prophesy: "The result (of a war) will be the annihilation of the Jewish race in Europe."

I will leave to others in this case the task of presenting to the Court the evidence as to how well that prophesy was fulfilled.

I would now offer to the Court the document book which contains the laws referred to, with respect to the persecution of the Jews, and the brief outlining that subject.

THE PRESIDENT: The Tribunal will now adjourn until 10 o'clock tomorrow morning.

[The Tribunal adjourned until 23 November 1945 at 1000 hours.]

FOURTH DAY

Friday, 23 November 1945

Morning Session

DR. OTTO NELTE (Counsel for Defendant Keitel): Mr. President, you advised the Defense in yesterday's session that the Defense should already at this stage of the Trial raise objections if they believe they have any against the documentary evidence introduced by the Prosecution.

The Chief Prosecutor introduced in Court yesterday a graphic presentation concerning the Reich Ministries and other bureaus and offices at the highest level of the German Government. My client is of the opinion that this presentation is erroneous in the following respects which concern his own person:

1. A Reich Defense Council has never existed. The Reich Defense Law, which provided for a Reich Defense Council in the event of war, has never been published; a session of a Reich Defense Council has never taken place. For this reason, the Defendant Keitel was never a member of a Reich Defense Council.

2. The Secret Cabinet Council which was to be created in accordance with the law of February 4, 1938, never came into existence. It was never constituted; it never held a session.

3. The Defendant Keitel never was Reich Minister. Like the Commanders-in-Chief of the Army and the Navy, he merely had the rank of a Reich Minister. Consequently, he never was a Minister without portfolio either. He did not participate in any advisory Cabinet session.

I should like to ask the Court for its opinion as to whether these objections may be made the object of an examination at this stage of the Trial or whether they are to be reserved for a later stage?

THE PRESIDENT: The Tribunal rules that the documents are admissible, but the defendants can prove at a later stage any matters which are relevant to the documents. It is not necessary for the defendants to make objections at this stage. At a later stage they can prove any matters which are relevant to the weight of the documents.

DR. DIX: May I ask the Tribunal a question?

We have now been able to see, in part, the briefs and documents which were introduced in court yesterday. In that connection we

have established that some of the documents submitted by the Prosecution yesterday were not quoted in their entirety, nor were they presented in substance. My question now is: Shall the contents, the entire contents, of all the documents which were presented to Court form the basis for the Court's decision, even in cases where the Prosecutor who presented the documents did not refer to their contents?

In other words, must we consider all of the documents presented in Court — including those the contents of which were not verbally referred to — as a basis for the judgment and, consequently, should they be examined with a view to determining whether the defendants wish to raise any objections?

Finally I wish to ask the Tribunal whether the entire contents of all the documents which were submitted to the Court yesterday, and which may possibly be submitted in the future, are to be understood by us as a basis for judgment even if the Prosecution does not present them word for word or in substance or refer to them in any other way.

THE PRESIDENT: Every document, when it is put in, becomes a part of the record and is in evidence before the Tribunal, but it is open to the defendants to criticize and comment upon any part of the document when their case is presented.

DR. DIX: Thank you. The question is clarified herewith.

THE PRESIDENT: There are three announcements which I have to make on behalf of the Tribunal; and the first is this:

That we propose that the Tribunal shall not sit on Saturday morning in this week, in order that defendants' counsel may have more time for the consideration of the documents and arguments, which have been made up to that time. That is the first matter.

The second matter is that the Tribunal desires that all motions and applications shall, as far as practicable, be made in writing, both by the Prosecution and by the Defense. There are occasions, of course, such as this morning when motions and applications for the purposes of explanation, are more conveniently made orally, but as far as practicable, it is the desire of the Tribunal that they shall be made in writing, both by the Prosecution and by the Defense.

And the other matter is an observation, which the Tribunal desires me to make to the Prosecution, and to suggest to them that it would be more convenient to the Tribunal and possibly also to the Defense, that their briefs and volumes of documents should be presented to the Tribunal before Counsel speaking begins that branch of the case, so that the brief and volume of documents should be before the Tribunal whilst Counsel is addressing the Tri-

bunal upon that branch of the case; and also that it would be convenient to the Tribunal—if it is convenient to Counsel for the Prosecution—that he should give a short explanation—not a prolonged explanation — of the documents, which he is presenting to the Court, drawing their attention to any passages in the documents, which he particularly wishes to draw attention to.

I will call upon the Chief Prosecutor for the United States to continue his address.

COL. STOREY: May it please the Tribunal, yesterday afternoon it appeared that there was some question about the identification of documents formally offered in evidence yesterday. Therefore, with the Tribunal's permission I should like to offer them by number, formally, so that the Clerk can get them on his record and may be identified, with Your Honors' permission.

The United States—and may I say, Sir, that we offer each one of these exhibits in evidence, requesting that they be received and filed as evidence for the United States of America, with the understanding that Defense Council may later interpose objections. If that is agreeable, Sir, the first is United States Exhibit Number 1, the affidavit of Major William H. Coogan, concerning the capture, processing and authentication of documents, together with Robert G. Storey's accompanying statement:

United States Exhibit Number 2, being 2903-PS, being the Nazi Party chart, together with authentication certificates;

United States Exhibit Number 3, 2905-PS, the Nazi State chart, together with authentication certificates;

United States Exhibit Number 4, 2836-PS, the original statement of Defendant Göring as to positions held;

United States Exhibit Number 5, Document 2829-PS, the same, concerning Defendant Ribbentrop...

THE PRESIDENT: Could not all this be done by the General Secretary... the numbering of these documents?

COL. STOREY: Yes, Sir, that is correct. That is agreeable with us, Sir, but the General Secretary raised the question that it was not in the record. We have the complete tabulation describing each document by number, and if it is agreeable with Your Honors, I will offer the description on this page, correctly describing, by exhibit number, each one that was offered in evidence yesterday.

THE PRESIDENT: We will authorize the General Secretary to accept the documents so numbered.

COL. STOREY: Thank you, Sir. The tabulation referred to is set forth in the following words and figures:

USA-1, Major Coogan's affidavit with Colonel Storey's statement;
USA-2, 2903-PS, Nazi Party chart and authenticating papers;
USA-3, 2905-PS, Nazi State chart and authenticating papers;
USA-4, 2836-PS, original statement of Göring's positions;
USA-5, 2829-PS, original statement of Ribbentrop's positions;
USA-6, 2851-PS, original statement of Rosenberg's positions;
USA-7, 2979-PS, original statement of Frank's positions;
USA-8, 2978-PS, original statement of Frick's positions;
USA-9, 2975-PS, original statement of Streicher's positions;
USA-10, 2977-PS, original statement of Funk's positions;
USA-11, 3021-PS, original statement of Schacht's positions;
USA-12, 2887-PS, original statement of Dönitz's positions;
USA-13, 2888-PS, original statement of Raeder's positions;
USA-14, 2973-PS, original statement of Von Schirach's positions;
USA-15, 2974-PS, original statement of Sauckel's positions;
USA-16, 2965-PS, original statement of Jodl's positions;
USA-17, 2910-PS, original statement of Seyss-Inquart's positions;
USA-18, 2980-PS, original statement of Speer's positions;
USA-19, 2972-PS, original statement of Von Neurath's positions;
USA-20, 2976-PS, original statement of Fritzsche's positions.

Document books:

USA-A, Common Objectives, Methods, and Doctrines of Conspiracy;

USA-B, The Acquiring of Totalitarian Control over Germany; Political; First Steps; Control Acquired;

USA-C, Consolidation of Control; (Utilization and Molding of Political Machinery);

USA-F, Purge of Political Opponents; Terrorization;

USA-G, Destruction of Trade Unions and Acquisition of Control over Productive Labor Capacity in Germany;

USA-H, Suppression of the Christian Churches in Germany;

USA-I, Adoption and Publication of the Program for Persecution of the Jews.

May it please the Tribunal, Mr. Justice Jackson called my attention—while we are offering all of these on behalf of the United States, naturally they are for the benefit and on the behalf of all the other nations who are cooperating in this case.

THE PRESIDENT: That is understood.

MAJOR WALLIS: May it please the Court, when we adjourned yesterday afternoon, I was in the process of developing the various means by which these conspirators acquired a totalitarian control of Germany. I wish to continue on that subject this morning, and I will first discuss the reshaping of education and the training of youth; and in accordance with Your Honors' suggestion, I offer

the document book, United States Exhibit D, and would call to the Court's attention that this book contains translations of the documents which we rely upon with respect to this portion of the case. These documents consist of German writings, German speeches of the defendants and other Nazi leaders, and are matters that we suggest are clearly within the purview of judicial notice of the Court. And in the brief which is offered for the assistance of the Court in connection with this subject, the exact portions of the documents which are desired to be brought to the attention of the Tribunal are set forth either by quotation from the documents, or by reference to the specific page number of the documents.

Meanwhile, during this entire pre-war period, the nation was being prepared psychologically for war, and one of the most important steps was the reshaping of the educational system so as to educate the German youth to be amenable to their will. Hitler publicly announced this purpose in November 1933, and I am quoting from Document 2455-PS. He said:

> "When an opponent declares, 'I will not come over to your side, and you will not get me on your side', I calmly say, 'Your child belongs to me already. A people lives forever. What are you? You will pass on. Your descendants, however, now stand in the new camps. In a short time they will know nothing else but this new community'."

He further said in May 1937, and I refer to Document Number 2454-PS:

> "This new Reich will give its youth to no one, but will itself take youth and give to youth its education and its own upbringing."

The first steps taken in making the German schools the tools of the Nazi educational system were two decrees in May 1934, whereby the Reich Ministry of Education was established and the control of education by local authorities was replaced by the absolute authority of the Reich in all educational matters. These decrees are set out in Documents 2078-PS, 2088-PS, 2392-PS. Thereafter, the curricula and organization of the German schools and universities were modified by a series of decrees in order to make these schools effective instruments for the teaching of Nazi doctrines.

The Civil Service Law of 1933, which was presented in evidence yesterday, made it possible for the Nazi conspirators to re-examine thoroughly all German teachers and to remove all "harmful and unworthy elements", harmful and unworthy in the Nazi opinion. Many teachers and professors, mostly Jews, were dismissed and were replaced with State-spirited teachers. All teachers were required

to belong to the National Socialist Teacher's League, which organization was charged with the training of all teachers in the theories and doctrines of the NSDAP. This is set forth in Document 2452-PS. The Führerprinzip was introduced into the schools and universities. I refer to Document 2393-PS.

In addition, the Nazi conspirators supplemented the school system by training the youth through the Hitler Jugend. The law of the Hitler Jugend, which is set forth in Document 1392-PS, states:

> "The German youth, besides being reared within the family and school, shall be educated physically, intellectually, and morally in the spirit of National Socialism to serve the people and community through the Hitler Youth."

In 1925 the Hitler Youth was officially recognized by the Nazi Party and became a junior branch of the SA. In 1931 the Defendant Schirach was appointed Reich Youth Leader of the NSDAP with the rank of SA Gruppenführer. I refer to Document 1458-PS. In June 1933 the Defendant Schirach was appointed Youth Leader of the German Reich. I refer to the same document, 1458-PS. In that same month, on orders of the Defendant Schirach, the Nazi conspirators destroyed or took over all other youth organizations. This was accomplished by force in the first instance. The Defendant Schirach, by decree dated 22 June, 1933 — I refer to Document 2229-PS — dissolved the Reich Committee of the German Youth Associations and took over their property. By similar decrees, all of which are set forth in the document book, all the youth organizations of Germany were destroyed. Then the Nazi conspirators made membership in the Hitler Jugend compulsory. I refer to Document 1392-PS.

The Hitler Jugend from its inception had been a formation of the Nazi Party. By virtue of the 1936 Youth Law, making membership compulsory, it became an agency of the Reich Government while still retaining its position as a formation of the Nazi Party. This is set forth in Document 1392-PS. By 1940 membership in the Hitler Jugend was over seven million. I refer you to Document 2435-PS. Through the Hitler Jugend the Nazi conspirators imbued the youth with Nazi ideology. The master race doctrine and anti-Semitism, including physical attack on the Jews, were systematically taught in the training program. I refer you to Document 2436-PS. The Hitler Jugend indoctrinated the youth with the idea that war is a noble activity. I refer to Document 1458-PS. One of the most important functions of the Hitler Jugend was to prepare the youth for membership in the Party and its formations. The Hitler Jugend was the agency used for extensive pre-military and military training of youth. I refer to Document 1850-PS. In addition to general

military training, special training was given in special formations. These included flying units, naval units, motorized units, signal units, et cetera.

The full details with the accompanying documents of the methods used by the Nazi conspirators in reshaping the educational system and supplementing it with the Hitler Jugend so as to educate the German youth to be amenable to the Nazi will and prepare youth for war are set forth in the document book which has been offered, and in the accompanying briefs.

Now I would like to direct your attention to the weapon of propaganda that was used during this period, and for this purpose I offer United States Exhibit Number E with the accompanying brief. This document book and the briefs which accompany it....

THE PRESIDENT: Have any copies of these documents been provided for the Defense Counsel?

COL. STOREY: I understand, Sir, they have been sent to the Defendants' Information Center. I may say, Sir, that with tomorrow we will have them in advance to everybody, including the Court and the Defense Counsel.

THE PRESIDENT: Very well.

MAJOR WALLIS: This document book and the accompanying brief is entitled "Propaganda Censorship and Supervision of Cultural Activities."

During this period one of the strongest weapons of the conspirators was propaganda. From the outset they appreciated the urgency of the task of inculcating the German masses with the National Socialist principles and ideology. The early utterances of Hitler and his fellow conspirators evidenced full recognition of the fact that their power could endure only if it rested on general acceptance of their political and social views.

Immediately following their accession to power, the Nazi conspirators instituted a determined program for wholesale organization of the masses by seizing control of all vehicles of public expression. The wide-spread use of propaganda by the powerful machine thus created became a key device in establishing control over all phases of the German economy, public and private. They conceived that the proper function of propaganda was to prepare the ground psychologically for political action and military aggression and to guarantee popular support of a system which was based on a permanent and steadily intensified application of terror and aggression both in the sphere of domestic politics and foreign relations.

To attain these objectives, propaganda was used to create specific thought patterns designed to make the people amenable to

the aims and program of the Nazis and to foster their active participation therein to the greatest extent possible. The nature of this propaganda is within the judicial purview of the Court. As Goebbels put it, it was aimed at "the conquest of the masses." Its intended effect was the elimination of all serious resistance in the masses. To achieve this result, as will be shown later in the evidence, the Nazi conspirators were utterly unscrupulous in their choice of means, a total disregard of veracity that presented their case purely from the standpoint of political expediency and their conception of national self-interest. Inasmuch as propaganda was the means to an end, "the conquest of the masses," it required different strategy at different times, depending on the objectives issued and pursued by the Nazi conspirators at any given moment. According to Hitler: "the first task of propaganda is the gaining of people for the future organization."

The recruiting of people for enlistment in the Party and supervised organizations was the primary objective in the years preceding and immediately following the seizure of power. After the rise to power, this task was broadened to include the enlistment of the people as a whole for the active support of the regime and its policies. As the Reich Propaganda Leader of the Party and Reich Minister for Propaganda, Goebbels stated:

"Propaganda, the strongest weapon in the conquest of the State, remains the strongest weapon in the consolidation and building up of the State."

The methods which they used to control this strongest weapon in the power of the State are set forth in a chart which I would like to call to the Court's attention at this time, and would like to introduce in evidence as USA Exhibit Number 21.

As you will note from the chart, there were three separate levels of control within the German Reich. The first level was the Party controls, which are represented on the chart by the top block. And you will see that the Party through its Examining Commission controlled the books and magazines, and issued books and magazines setting forth the ideology of the Party.

The second block, the Press Leader Division, supervised all publishers, headed Party newspapers and book publishers.

The third block, Press Chief,—this office controlled the Press Political Office, the Press Personnel Office, and supervised Party treatment of the press and treatment of Party affairs in the press.

The center block, the Office of Propaganda Leader, had under its control not only the press, but exhibits and fairs, speaker's bureaus, films, radio, culture, and other means of expression and dissemination of the ideology of the Party and its purposes.

The next block, Ideology, was devoted exclusively to the ideology of the Party headed by the Defendant Rosenberg. It supplied all the training materials, prepared the curricula for the schools, and the indoctrination of the people into the ideology of the Party. On that same level is Youth Education, presided over by the Defendant Schirach, who had under his control the Hitler Jugend; and then there were the University Students and Teachers Division of the Party controls.

On the next level you have the controls that were exercised by the State, and reading from left to right you have the Propaganda Coordination, Foreign Coordination and Cooperation, the radio, which was under the control of the Defendant Fritzsche, film, literature, the German press, periodicals, theater, arts, other cultural things, and the Ministry for Education.

Then, in the last tier, what is known as the corporate controls. These were under a semi-official control of both the Party and the State. These are the so-called cultural chambers. Their purpose was to have full control over the personnel engaged in the various arts and cultures, and engaged in the preparation and dissemination of news. First was the press—all reporters and writers belonged to that section. The next section is the fine arts, music, theater, film, literature, radio,—then going over into the Educational Branch the organization which the University teachers, the students and former corps members of the universities had to belong to.

By means of this vast network of propaganda machinery, the Nazi conspirators had full control over the expression and dissemination of all thought, cultural activities, and dissemination of news within the Reich. Nothing was or could be published in Germany that did not have the approval, express or implied, of the Party and State. The Defendant Schacht in his personal notes explains the effect of the killing of a piece of news in a totalitarian dictatorship. As he states it, it has never become publicly known that there have been thousands of martyrs in the Hitler regime. They have all disappeared in the cells or graves of the concentration camps, without ever having been heard of again; and he goes on to say, "what is the use of martyrdom in the fight against terror if it has no chance of becoming known and thus serving as an example for others."

THE PRESIDENT: Before you pass from this subject, there is a docket on the documents which shows that certain documents are missing. What does that mean? 1708, 2030.

MAJOR WALLIS: Those documents are in the process of being reproduced and will be furnished to the Court, I hope, before the

close of the day, Sir. They have been added to that book and, as yet, have not been completed in their process of reproduction.

THE PRESIDENT: Thank you. Have they been translated?

MAJOR WALLIS: Yes, Sir, they have been translated, and the translations are in the process of being reproduced.

THE PRESIDENT: Are the documents in their original form in German?

MAJOR WALLIS: Yes, I believe they are, Sir.

THE PRESIDENT: Very well.

MAJOR WALLIS: I would now like to direct the Court's attention to the militarization of Nazi-dominated organizations during this pre-war period and for that purpose I offer United States Exhibit Number J, which consists of a document book with English translations, and I present to the Court also a brief which accompanies this portion of the case.

Throughout this pre-war period, and while the Nazi conspirators were achieving and consolidating their totalitarian control of Germany, they did not lose sight of their main objective—aggressive war. Accordingly, they placed a considerable number of their dominated organizations on a progressively militarized footing, with a view to the rapid transformation of these organizations whenever necessary, as instruments of war. These organizations were the SS, the SA, the Hitler Jugend, the NSKK (or National Socialist Motor Corps), the NSFK (which is the National Socialist Aviation Corps), the RAD (which is the Reich Labor Service), and the OT (which is the Todt Organization).

The manner in which the militarization was accomplished is detailed in part in the documents, which have been presented to the Court and will be detailed further when the particular organizations are taken up and discussed and their criminality established at subsequent stages in the case. At this time, I would like to call the Court's attention to a chart, and while the chart is physically being placed on the board, I would offer United States Exhibit Number 22, which is Document 2833-PS and is a reproduction of Page 15 of the book entitled, *History of the Nazi Party.* You will note that on the left lower corner of the chart placed on the board, there are some papers attached. The top paper is an affidavit which reads as follows: "I certify that the above enlargement is a true and correct copy prepared under my direct supervision, of Document Number 2833-PS, Page 15 of the book entlitled *History of the Party,*" and you will note that underneath is a second paper and this affidavit states it is a correct photographic copy, which appears in the left-hand corner of the panel. This affidavit is signed by David Zablodowsky, sworn to and subscribed the 23rd day of November

1945 at Nuremberg, Germany, before James H. Johnson, First Lieutenant, Office of the United States Chief of Counsel.

This chart visualizes, as vividly as possible, just how this militarization took place in Germany. The chart is entitled, "The Organic Incorporation of German Nationals into the National Socialist System, and the Way to Political Leadership."

Starting at the bottom of the chart, you see the young folk, between the ages of 10 and 14. The arrows point both right and left. The arrow to the right is the Adolf Hitler School, for youth between the ages of 12 and 18. Both from the school and from the young folk, they proceed to the Hitler Jugend. At 18 years of age, they graduate from the Hitler Jugend into the various Party formations, the SA, the SS, the NSKK, the NSFK. At the age of 20, they continue from these Party formations into the Labor Front, and from the Labor Front, after they have served their period of time there, back again to the Party formations, of the SA, the SS, NSKK, NSFK, until they reach the age of 21. Then they proceed into the Army, serve in the Army from the ages of 21 to 23, and then back again into the Party formations of SA, SS, et cetera.

And then from that group, the select move up to be Political Leaders (Leiter) of the Nazi Party, and from that group are selected the cream of the crop who go to the Nazi Party Special Schools and from these schools, as is represented on the top of the chart, graduate the political Führer of the people.

I would emphasize again to the Court that this chart is not anything that was prepared by Counsel in this case. It was prepared by the Nazi Party people and it comes from their own history.

Thus, by the end of the pre-war period, the Nazi conspirators had achieved one of the first major steps in their grand conspiracy. All phases of German life were dominated by Nazi doctrine and practice and mobilized for the accomplishment of their militant aims. The extent to which this was accomplished can be no better expressed than in the words of Hitler when he spoke to the Reichstag on 20 February 1938. I refer to Document 2715-PS. He said:

> "Only now have we succeeded in setting before us the great tasks and in possessing the material things which are the prerequisites for the realization of great creative plans in all fields of our national existence. Thus, National Socialism has made up with a few years for what centuries before it had omitted.... National Socialism has given the German people that leadership which as Party not only mobilizes the nation but also organizes it, so that on the basis of the natural principle of selection, the continuance of a stable political leadership is safeguarded forever... National Socialism

possesses Germany entirely and completely since the day when, 5 years ago, I left the house in Wilhelmsplatz as Reich Chancellor. There is no institution in this state which is not National Socialist. Above all, however, the National Socialist Party in these 5 years not only has made the nation National Socialist, but also has given itself the perfect organizational structure which guarantees its permanence for all future. The greatest guarantee of the National Socialist revolution lies in the complete domination of the Reich and all its institutions and organizations, internally and externally, by the National Socialist Party. Its protection against the world abroad, however, lies in its new National Socialist armed forces....

"In this Reich, anybody who has a responsible position is a National Socialist.... Every institution of this Reich is under the orders of the supreme political leadership.... The Party leads the Reich politically, the Armed Forces defend it militarily.... There is nobody in any responsible position in this state who doubts that I am the authorized leader of the Reich."

Thus spoke Adolf Hitler at the end of this period on the 20th of February 1938.

COL. STOREY: If the Tribunal please...

DR. ALFRED SEIDL (Counsel for Defendant Frank): Mr. President, may I make a few short remarks in this connection? The defendants were given, along with the Indictment, a list of the documents. This list contains the following preamble:

"Each of the defendants is hereby informed that the Prosecution will use some or all of the documents listed in the appendix in order to corroborate the points enumerated in the Indictment."

Now, the Chief Prosecutor introduced in court this morning about 12 documents and a scrutiny of that list revealed that not a single one of the documents is mentioned. Thus, already now, at the very beginning of the Trial, we are confronted with the fact that not only are documents presented to the Court without the defendant being acquainted with their contents, but that documents are being used as documentary evidence which are not even listed.

Not a single one of these documents is mentioned in the list and I must confess that an adequate defense is altogether impossible under these circumstances. I therefore move:

1. That the Tribunal direct the Prosecution to submit a list of all documents which will be placed before the Court during examination;

2. To instruct the Prosecution to make available to the defendants and their counsel—at the latest on the day when documents are being presented to the Court—a copy of the German text; and

3. That the main proceedings be suspended until the Prosecution is in a position to comply with these requests. Otherwise, I, at least, will not be able to proceed with the defense.

THE PRESIDENT: Colonel Storey, or Counsel for the Prosecution, will you say what answer you have to make to this objection?

COL. STOREY: If the Tribunal please, in the first place practically every document referred to by Major Wallis is a document of which the Court would take judicial knowledge. In the second place, a list of documents was filed in the Defense Information Center on November 1st. I am not sure as to whether all of these or a part of them were included. In the third place each attorney presenting each segment of the case sends down to the Defense Information Center a list of the documents which he proposes to offer in evidence upon his presentation. In the fourth place, I wonder if the Tribunal and Defense Counsel realize the physical problems that are imposed? I am informed that copies of these documents in English, as well as copies of the briefs, were delivered either last night or this morning in defendants' Information Center. Lastly, other presentations that follow—we will abide by the Tribunal's request: namely, that prior to the presentation the Court will be furnished with these document books, with these briefs, and Defense Counsel will also be furnished with them in advance. The weekend will permit us to do that.

THE PRESIDENT: The Tribunal thinks that the Trial must now continue without any adjournment, but that in future as soon as possible the Defendants' Counsel will be furnished with copies of the documents which are to be put in evidence.

DR. ROBERT SERVATIUS (Counsel for Defendant Sauckel): I should like to present the following: The documents are presented to the Court also in an English translation. An examination of these translations should be made available to the Defense. I point out particularly that the translation of technical terms could possibly lead to misunderstandings. Moreover, the documents are provided with an introductory remark and a table of contents. The Defense should also have opportunity to read through this table of contents and examine it.

I make the motion that these English translations and their preliminary remarks be made available to the Defense.

THE PRESIDENT: Colonel Storey, I understood from you that you proposed to make available to the defendants the trial briefs which contain certain observations upon the documents put in.

COL. STOREY: That is right, Sir. They have been, are now, and will be completed during the weekend, and, as I understood Defense Counsel were willing for the briefs to be furnished in English, and if they want a translation, there will be German speaking officers in defendants' Information Center at their service. I understood that was agreeable yesterday.

THE PRESIDENT: Yes.

COL. STOREY: Now sir, while I am on my feet, and in order to obviate some misapprehension, for the benefit of Defense Counsel, when we refer to document numbers as, say, 1850-PS, in many instances that is a document which is a copy of a citation or a decree in the *Reichsgesetzblatt,* and, therefore, is not a separate document of ours, and we have placed in the defendants' Information Center ample copies and sets of the *Reichsgesetzblatt,* and I dare say that one-half of the documents referred to in Major Wallis' presentation will be found in the *Reichsgesetzblatt,* and I assure Your Honors that over the weekend we will do the utmost to explain to Defense Counsel and to make available to them all information that we have and will do so in the future in advance.

THE PRESIDENT: Thank you, Colonel Storey. The Tribunal will now adjourn for 10 minutes.

[A recess was taken.]

COL. STOREY: If Your Honors please, the next subject to be presented is the economic preparation for aggressive war, by Mr. Dodd.

MR. THOMAS J. DODD (Executive Trial Counsel for the United States): May it please the Tribunal, Mr. President and Members of the Tribunal:

In view of the discussions which took place just before the recess period, I believe it proper for me to inform the Tribunal that the documents to which I shall make reference,—a list of those documents has been lodged in the defendants' Information Center, and, as well, photostatic copies of the originals have been placed there this morning.

It is my responsibility on behalf of the Chief Prosecutor for the United States of America to present the proof with reference to the allegations of the Indictment under Section IV (E), on Page 6* of the English version of the Indictment, and particularly beginning

* Page numbers used in references throughout the Proceedings are to the original documents and do not apply to pagination used in the present volumes.

with the second paragraph under (E), which is entitled, "The Acquiring of Totalitarian Control in Germany, Economic, and the Economic Planning and Mobilization for Aggressive War."

The second paragraph:

"2. They used organizations of German business as instruments of economic mobilization for war.

"3. They directed Germany's economy towards preparation and equipment of the military machine. To this end they directed finance, capital investment, and foreign trade.

"4. The Nazi conspirators, and in particular the industrialists among them, embarked upon a huge rearmament program, and set out to produce and develop huge quantities of materials of war and to create a powerful military potential."

The fifth paragraph under that same heading (E), and the final one in so far as my responsibility goes this morning, is that which reads:

"With the object of carrying through the preparation for war the Nazi conspirators set up a series of administrative agencies and authorities. For example, in 1936 they established for this purpose the office of the Four Year Plan with the Defendant Göring as Plenipotentiary, vesting it with overriding control over Germany's economy. Furthermore, on the 28th of August 1939, immediately before launching their aggression against Poland, they appointed the Defendant Funk Plenipotentiary for Economics; and on the 30th of August 1939 they set up the Ministerial Council for the Defense of the Reich to act as a War Cabinet."

I will not take the time of this Tribunal to prove what the world already knows: that the Nazi conspirators rearmed Germany on a vast scale. I propose to place in evidence the secret records of the plans and deliberations of the inner councils of the Nazis, which prove that the reorganization of the German Government, the financial wizardry of the Defendant Schacht, and the total mobilization of the German economy largely under the Defendant Schacht, Göring, and Funk, were directed at a single goal: aggressive war.

I should like to hand to the Court at this point the so-called document book, which contains the English translation of the original German document. I do not make an offer at this time of these documents in evidence, but hand them to the Court for the purpose of easing the task of the Court in following the discussion concerning these documents. I might say at this point also that I should like to submit at a little later date a brief for the assistance of the Court after I have concluded my remarks before it this morning.

The significance of the economic measures adopted and applied by the conspirators can, of course, be properly appraised only if they are placed in the larger social and political context of Nazi Germany. The economic measures were adopted while the conspirators were, as has already been shown, directing their vast propaganda apparatus to the glorification of war. They were adopted while the conspirators were perverting physical training into training for war. They were adopted while, as my colleagues will show, these conspirators were threatening to use force and were planning to use force to achieve their territorial and political objects. In short, if Your Honors please, these measures constitute in the field of economics and government administration the same preparation for aggressive war which dominated every aspect of the Nazi State.

In 1939 and 1940 after the Nazi aggression upon Poland, Holland, Belgium, and France it became perfectly clear to the world that the Nazi conspirators had created probably the greatest instrument of aggression in history.

That machine was built up almost in its entirety in a period of less than one decade. In May of 1939 Major General George Thomas, former Chief of the Military-Economic Staff in the Reich War Ministry, reported that the German Army had grown from seven Infantry divisions in 1933 to thirty-nine Infantry divisions, among them four fully motorized and three mountain divisions, eighteen Corps Headquarters, five Panzer divisions, twenty-two machine gun battalions. Moreover, General Thomas stated that the German Navy had greatly expanded by the launching, among other vessels, of two battleships of 35,000 tons, four heavy cruisers of 10,000 tons, and other warships; further, that the Luftwaffe had grown to a point where it had a strength of 260,000 men, 21 squadrons, consisting of 240 echelons, and 33 anti-aircraft batteries.

He likewise reported that out of the few factories permitted by the Versailles Treaty there had arisen, and I am quoting, if Your Honors please, from the document bearing our number EC-28, which consists of a lecture delivered by Major General Thomas on the 24th of May 1939 in the Nazi Foreign Office. General Thomas said in part—or rather he reported—that out of the few factories permitted by the Versailles Treaty there had arisen:

> "... the mightiest armament industry now existing in the world. It has attained the performances which in part equal the German wartime performances and in part even surpass them. Germany's crude steel production is today the largest in the world after America's. The aluminum production exceeds that of America and of the other countries of the world very considerably. The output of our rifle, machine

gun, and artillery factories is at present larger than that of any other state."

That quotation, I repeat, was from a document bearing the lettering "EC" and the number after the dash "28". It is United States of America Exhibit 23.

These results—the results which General Thomas spoke about in his lecture in May of 1939—were achieved only by making preparation for war the dominating objective of German economy. And, to quote General Thomas again, he stated:

"History will know only a few examples of cases where a country has directed, even in peace time, all its economic forces so deliberately and systematically towards the requirements of war, as Germany was compelled to do in the period between the two World Wars."

That quotation from General Thomas will be found in the document bearing our Number 2353-PS. It is another quotation from General Thomas, but from another writing of his.

The task of mobilizing the German economy for aggressive war began promptly after the Nazi conspirators' seizure of power. It was entrusted principally to the Defendants Schacht, Göring, and Funk.

The Defendant Schacht, as is well known, was appointed President of the Reichsbank in March of 1933 and Minister of Economics in August of 1934. The world did not know, however, that the responsibility for the execution of this program was entrusted to the office of the Four Year Plan under the Defendant Göring.

I should now like to call to Your Honors' attention a document bearing the number EC-408, and I should also like to refer at this time to another document for Your Honors' attention while I discuss the material—Number 2261-PS.

And I continue to say that the world did not know, as well, that the Defendant Schacht was designated Plenipotentiary for the War Economy on May 21, 1935, with complete control over the German civilian economy for war production in the Reich Defense Council, established by a top-secret Hitler decree.

I invite Your Honors' attention to the Document 2261-PS, which I referred to a few minutes ago.

The Defendant Schacht recognized that the preparation for war came before all else for, in a memorandum concerning the problems of financing rearmament, written on the 3rd of May 1935, he stated that his comments were based on the assumption that the accomplishment of the armament program...

THE PRESIDENT [Interposing]: Pardon me, but you referred us to Document 2261.

MR. DODD: Yes, Your Honor.

THE PRESIDENT: But you haven't read anything from it.

MR. DODD: I did not; I merely referred the Court to it since it...

THE PRESIDENT [Interposing]: It would help us, I think, if, when you refer to a document, you refer to some particular passage in it.

MR. DODD: Very well.

THE PRESIDENT: I think it must be the middle paragraph in the document: "The Führer has nominated the President of the Directorate of the Reichsbank, Dr. Schacht...."

MR. DODD: Yes, that is the paragraph to which I wish to make reference. If Your Honors please, I refer to the second paragraph, or the middle paragraph, which states, in a letter dated June 24, 1935 at Berlin:

"The Führer and Reich Chancellor has nominated the President of the Directorate of the Reichsbank, Dr. Schacht, to be Plenipotentiary General for the War Economy."

I might point out, in addition to the second paragraph, the last paragraph of that letter or the last sentence of the letter, which reads: "I point out the necessity of strictest secrecy once more"—the letter being signed, "Von Blomberg."

Through Schacht's financial genius monetary measures were devised to restore German industry to full production; and through the control of imports and exports, which he devised under his plan of 1934, German production was channeled in accordance with the requirements of the German war machine.

I shall, with the Court's permission, later discuss the details of documentary proof of this assertion.

In 1936, with an eye to the experience in the first World War, the Nazi conspirators embarked on an ambitious plan to make Germany completely self-sufficient in strategic war materials such as rubber, gasoline, and steel, in a period of 4 years, so that the Nazi conspirators would be fully prepared for aggressive war. The responsibility for the execution of this program was entrusted to the office of the Four Year Plan under the Defendant Göring — and at this point I should like to refer to the document bearing the number and the lettering EC-408. It is dated the 30th day of December 1936, marked "Secret Command Matter", and entitled the "Report Memorandum on the Four Year Plan and Preparation of the War Economy."

It sets out that the Führer and Reich Chancellor has conferred powers in regard to mobilization preparations in the economic field

that need further definition, and in the third paragraph it refers specifically to Minister President, Generaloberst Göring as Commissioner of the Four Year Plan, by authority of the Führer and Reich Chancellor granted the 18th day of October 1936. The existence of this program involved the reorganization and control of the whole German economy for war.

Again referring to Major General Thomas — and specifically to our document marked EC-27 — General Thomas, in a lecture on the 28th of February 1939, made at the Staff instructor's course, stated:

"The National Socialist State, soon after taking over power, reorganized the German economy in all sections and directed it towards a military viewpoint, which had been requested by the Army for years. Due to the reorganization, agriculture, commerce and professions become those powerful instruments the Führer needs for his extensive plans, and we can say today that Hitler's mobile politics, as well as the powerful efforts of the Army and economy, would not have been possible without the necessary reorganization by the National Socialist Government. We can now say that the economic organization as a whole corresponds with the needs, although slight adjustments will have to be made yet. Those reorganizations made a new system of economics possible which was necessary in view of our internal and foreign political situation as well as our financial problems. The directed economy, as we have it today concerning agriculture, commerce, and industry, is not only the expression of the present State principles, but at the same time also the economy of the country's defense."

If Your Honors please, this program was not undertaken in a vacuum; it was deliberately designed and executed to provide the necessary instrument of the Nazi conspirators' plans for aggressive war.

In September of 1934 the Defendant Schacht frankly acknowledged to the American Ambassador in Berlin that the Hitler Party was absolutely committed to war, and the people too were ready and willing; and that quotation is found in Ambassador Dodd's diary and is document bearing our Number 2832-PS and United States Exhibit Number 29, particularly on page 176 of Ambassador Dodd's diary.

At the same time, the Defendant Schacht promulgated his new plan for the control of imports and exports in the interest of rearmament. A year later he was appointed Plenipotentiary for the War Economy by the top-secret decree referred to a few minutes ago.

In September 1936 the Defendant Göring announced — at a meeting attended by the Defendant Schacht and others — that Hitler had issued instructions to the Reich War Minister on the basis that the show-down with Russia is inevitable, and added that "all measures have to be taken just as if we were actually in the stage of imminent danger of war."

I refer the Court to the document bearing the letters EC-416 and particularly . . . Before I discuss the quotation I might indicate that this document is also marked a secret Reich matter in the minutes of the Cabinet meeting of the 4th of September 1936, at 12 o'clock noon. It tells who was present: the Defendant Göring, Von Blomberg, the Defendant Schacht, and others.

And on the second page of that document, in the second paragraph, is found the quotation by the Defendant Göring. It starts from the basic thought that:

> "The show-down with Russia is inevitable. What Russia has done in the field of reconstruction we too can do."

On the third page of that document, in the second paragraph, the Defendant Göring stated: "All measures have to be taken just as if we were actually in the stage of imminent danger of war."

In the same month the office of the Four Year Plan was created with the mission of making Germany self-sufficient for war in 4 years. I refer back, at this point, to the Document Number EC-408, and particularly refer Your Honors to the third paragraph, again, of that document, where the statement is made as regards the war economy:

> "Minister President Generaloberst Göring sees it as his task, within 4 years, to put the entire economy in a state of readiness for war."

The Nazi Government officials provided the leadership in preparing Germany for war. They received, however, the enthusiastic cooperation of the German industrialists, and the role played by industrialists in converting Germany to a war economy is an important one, and I turn briefly to that aspect of the economic picture.

On the invitation of the Defendant Göring, approximately 25 of the leading industrialists of Germany, and the Defendant Schacht, attended a meeting in Berlin on the 20th day of February, 1933. This was shortly before the election of March 5, 1933 in Germany. At this meeting Hitler announced the conspirators' aim to seize totalitarian control over Germany, to destroy the parliamentary system, to crush all opposition by force, and to restore the power of the Wehrmacht.

Among those present on that day, in February of 1933 in Berlin, were Gustav Krupp, head of the huge munitions firm Friedrich Krupp, A.G.; four leading officials of the I.G. Farben, one of the world's largest chemical concerns; present, I repeat, was also the Defendant Schacht, and Albert Vögler was also there, the head of the huge steel trusts, the United Steel Works of Germany, and there were other leading industrialists there.

In support of the assertion with respect to that meeting at that time and in that place, I refer Your Honors to the document bearing the number EC-439, it being an affidavit of George von Schnitzler, and it reads as follows:

"I George von Schnitzler, a member of the Vorstand of I.G. Farben, make the following deposition under oath:

"At the end of February 1933 four members of the Vorstand of I.G. Farben, including Dr. Bosch, the head of the Vorstand, and myself, were asked by the office of the President of the Reichstag to attend a meeting in his house, the purpose of which was not given. I do not remember the two other colleagues of mine who were also invited. I believe the invitation reached me during one of my business trips to Berlin. I went to the meeting which was attended by about twenty persons, who I believe were mostly leading industrialists from the Ruhr.

"Among those present I remember:

"Dr. Schacht, who at that time was not yet head of the Reichsbank again and not yet Minister of Economics;

"Krupp von Bohlen, who in the beginning of 1933 presided the Reichsverband der Deutschen Industrie, which later on was changed in the semi-official organization 'Reichsgruppe Industrie';

"Dr. Albert Vögler, the leading man of the Vereinigte Stahlwerke;

"Von Loewenfeld from an industrial work in Essen;

"Dr. Stein, head of the Gewerkschaft Auguste Victoria, a mine which belongs to the I.G. Dr. Stein was an active member of the Deutsche Volkspartei.

"I remember that Dr. Schacht acted as a kind of host.

"While I had expected the appearance of Göring, Hitler entered the room, shook hands with everybody and took a seat at the table. In a long speech he talked mainly about the danger of communism over which he pretended that he just had won a decisive victory.

"He then talked about the Bündnis (alliance) into which his party and the Deutschnationale Volkspartei had entered. This latter party, in the meantime, had been reorganized by Herr Von Papen. At the end he came to the point which seemed to me the purpose of the meeting. Hitler stressed the importance that the two aforementioned parties should gain the majority in the coming Reichstag election. Krupp von Bohlen thanked Hitler for his speech. After Hitler had left the room, Dr. Schacht proposed to the meeting the raising of an election fund of, as far as I remember, RM 3 million. The fund should be distributed between the two 'allies' according to their relative strength at the time being. Dr. Stein suggested that the Deutsche Volkspartei should be included . . ."

THE PRESIDENT [Interposing]: Mr. Dodd, it seems to me that really all that that document shows is that there was a meeting at which Mr. Schacht was present, and at which it was determined to subscribe an election fund in 1933.

MR. DODD: That is quite so, Your Honor. I will not labor the Court by reading all of it. There were some other references, but not of major importance, in the last paragraph, to a division of the election fund. I just call Your Honors' attention to it in passing.

I should like, at this point, to call Your Honors' attention to the document bearing the Number D-203. It is three-page document: D-203.

THE PRESIDENT: Yes.

MR. DODD: I wish to read only excerpts from it very briefly. It is the speech delivered to the industrialists by Hitler, and I refer particularly to the second paragraph of that document: "Private enterprise cannot be maintained in the age of democracy . . ."

THE PRESIDENT [Interposing]: What is the date of that?

MR. DODD: It is the speech made at the meeting on the 20th of February 1933 at Berlin.

THE PRESIDENT: Yes.

MR. DODD:

"Private enterprise cannot be maintained in the age of democracy; it is conceivable only if the people have a sound idea of authority and personality."

I refer to Page 2 of the document, and I should like to read an excerpt from that first paragraph on Page 2, about 13 sentences down, beginning with the words:

"I recognized even while in the hospital that one had to search for new ideas conducive to reconstruction. I found them in

Nationalism, in the value of . . . strength and power of individual personality."

And, a little further down, the next to the last and the last sentence of that same paragraph, Hitler said:

"If one rejects pacifism, one must put a new idea in its place immediately. Everything must be pushed aside, must be replaced by something better."

And, in the third paragraph, the last sentence beginning:

"We must not forget that all the benefits of culture must be introduced more or less with an iron fist, just as once upon a time the farmers were forced to plant potatoes."

Then finally, on that page, in the fourth paragraph — nearly at the end of it:

"With the very same courage with which we go to work to make up for what had been sinned during the last 14 years, we have withstood all attempts to move us off the right way."

Then, on the top of the next page, the second paragraph, these words:

"Now we stand before the last election. Regardless of the outcome there will be no retreat, even if the coming election does not bring about a decision."

THE PRESIDENT: Why did you not read the last line on Page 2?

MR. DODD: Beginning with the words "while still gaining power"?

THE PRESIDENT: The sentence before:

"We must first gain complete power if we want to crush the other side completely. While still gaining power, one should not start the struggle against the opponent. Only when one knows that one has reached the pinnacle of power, that there is no further possible development, shall one strike."

MR. DODD: I was going to refer to that, if Your Honor pleases, in a minute. However, I think it is quite proper to have it inserted here.

Before starting to read this last paragraph, I suggest that it is nearly the accustomed recess time, as I understand it, and it is a rather lengthy paragraph . . .

THE PRESIDENT [Interposing]: Yes, we will adjourn until 2 o'clock.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

MR. DODD: If Your Honor pleases, if I may go back for just a very little bit to take up the train of thought where I left off at the noon recess.

We were discussing the document, bearing the number D-203, and I had referred particularly to the third page of that document, and even more particularly to the second paragraph on that page; and I wish to read from a sentence approximately 8 or 10 lines down in that second paragraph, which reads as follows:

> "The question of restoration of the Wehrmacht will not be decided at Geneva but in Germany, when we have gained internal strength through internal peace."

I wish to refer again to the same page of the same document, and to the last paragraph and the last sentence, with reference to the Defendant Göring, who was present at that same meeting to which this document refers, the meeting of February 20, 1933 in Berlin. Göring said that the sacrifices asked for surely would be so much easier for industry to bear if it realized that the election of March 5th will surely be the last one for the next 10 years, probably even for the next 100 years.

In a memorandum dated the 22d day of February 1933, and for the information of the Court, in the document book bearing the number D-204, Gustav Krupp described this meeting briefly, and in the memorandum wrote that he had expressed to Hitler the gratitude of the 25 industrialists present at the meeting on February 20, 1933.

There are other expressions in that memorandum, which we do not deem to be particularly pertinent to the allegations of the Indictment with which we are now concerned. It is also to establish the corroboration of the affidavit of Puhl that the meeting was held.

I might point out to the Court that this memorandum, together with the report of the speech of Hitler, were found by the British and the United States armies in the personal files of the Defendant Krupp.

I am aware, if Your Honors please, that the method I am pursuing here is a little tedious, because I am trying to refer specifically to the documents, and particularly to the excerpts referred to in my remarks, and therefore this presentation differs very considerably from that which has gone before. I trust, however, that you will bear with me, because this part of the case requires some rather careful and detailed explanations.

In April of 1933, after Hitler had entrenched himself in power, Gustav Krupp, as chairman of the Reich Association of German

Industry, which was the largest association of German industrialists, submitted to Hitler the plan of that Association for the reorganization of German industry, and in connection therewith, undertook to bring the Association into line with the aims of the conspirators, and to make it an effective instrument for the execution of their policies.

In a letter of transmittal, Krupp stated that the plan of reorganization which he submitted on behalf of the Association of industrialists, was characterized by the desire to coordinate economic measures and political necessity, adopting the Führer conception of the new German State. A copy of that letter of transmittal is set out in the document book under the Number D-157.

In the plan of reorganization itself, Krupp stated:

"The turn of political events is in line with the wishes which I myself and the board of directors have cherished for a long time . . . . In reorganizing the Reich Association of German Industry, I shall be guided by the idea of bringing the new organization into agreement with the political aims of the Reich Government."

The ideas expressed by Krupp on behalf of the members of the Reich Association of German Industry for introducing the Leadership Principle into industry, were subsequently adopted.

I respectfully refer the Court to the *Reichsgesetzblatt* of 1934, Part I, Page 1194, Sections 11, 12, and 16.

Under the decree introducing the Leadership Principle into industry, each group of industry was required to have a leader who was to serve without compensation. The leaders were to be appointed and could be removed at the discretion of the Minister of Economics. The charter of each group was to be decreed by the leader, who was obligated to lead his group in accordance with the principles of the National Socialist State.

I think it is fair to argue that the introduction of the Leadership Principle into the organizations of business permitted the centralization of authority, and guaranteed the efficient execution of orders, which the Government issued to business, in the interest of a promotion of a war economy. And the overwhelming support given by German industrialists to the Nazi war program is very vividly described in a speech prepared by Gustav Krupp in January of 1944, for delivery at the University of Berlin; and I must again respectfully refer Your Honors to the document in your book bearing the identification Number D-317.

I shall not, of course, bore this court with a reading of that whole document, but I should like to quote from it without wrenching any of the material from its true context.

And this statement is found beginning in the third and the fourth paragraphs, being the first large paragraph on the first page:

"War material is lifesaving for one's own people, and whoever works and performs in those spheres can be proud of it. Here, enterprise as a whole finds its highest justification of existence. This justification, I may inject this here, crystallized especially during the time of interregnum between 1919 and 1933, when Germany was lying down disarmed . . . ."

And further on:

"It is the one great merit of the entire German war economy that it did not remain idle during those bad years, even though its activity could not be brought to light for obvious reasons. Through years of secret work, scientific and basic groundwork was laid in order to be ready again to work for the German Armed Forces at the appointed hour without loss of time or experience."

And further quoting from that same speech, and the last paragraph, particularly on the first page:

"Only through this secret activity of German enterprise, together with the experience gained meanwhile through production of peacetime goods, was it possible, after 1933, to fall into step with the new tasks arrived at, restoring Germany's military power. Only through all that could the entirely new and various problems, brought up by the Führer's Four Year Plan for German enterprise, be mastered. It was necessary to exploit new raw materials, to explore and experiment, to invest capital in order to make German economy independent and strong—in short, to make it war-worthy."

Quoting even further from this same speech:

"I think I may state here that the German enterprises followed the new ways enthusiastically, that they made the great intentions of the Führer their own, by fair competition and conscious gratitude, and became his faithful followers. How else could the tasks between 1933 and 1939, and especially those after 1939, have been overcome?"

It must be emphasized that this secret rearmament program was launched immediately upon the seizure of power by the Nazi conspirators. On April 4, 1933 the Reich Cabinet passed a resolution establishing a Reich Defense Council. The function of this Council was secretly to mobilize for war; and at the second meeting of the working committee of the Councillors for Reich Defense, which was, by the way, the predecessor of the Reich Defense Council,—at that second meeting which was held on May 22nd of 1933, the chairman was the Defendant Keitel, then Colonel Keitel; and he stated that

the Reich Defense Council would immediately undertake to prepare for war emergency. He stressed the urgency of the task of organizing a war economy, and announced that the Council stood ready to brush aside all of their obstacles. Fully aware of the fact that their action was in flagrant violation of the Treaty of Versailles, the Defendant Keitel emphasized the extreme importance of absolute secrecy when he said, and I quote from the document bearing the number EC-177, on Page 5 of that document. Colonel Keitel is speaking, and he said:

"No document ought to be lost, since otherwise it may fall into the hands of the enemies' intelligence service. Orally transmitted matters are not provable; they can be denied by us in Geneva."

The singleness of purpose with which the Nazi conspirators geared the German economy to the forging of a war machine is even further shown by the secret minutes of the sixth meeting of the working committee of the so-called Reich Defense Council, held on the 7th of February 1934, as shown in the document bearing the number EC-404, marked "Secret Command Matter", and dated the 7th of February 1934. At this meeting, Lieutenant General Beck pointed out that: "The actual state of preparation is the purpose of this session."

Parenthetically, I might say that on the first page of that document it appears that besides Lieutenant General Beck, the Defendant Jodl was present, then Lieutenant Colonel Jodl. There was a Captain Schmundt; and there was a Colonel Guderian there; and there was a Major General Von Reichenau; there was a Major Warlimont; and these are names that Your Honors will hear more of in the course of the presentation of this case.

Detailed measures of financing a future war were discussed and it was pointed out that the financial aspects of the war economy would be regulated by the Reich Finance Ministry and the Reichsbank, which was headed by the Defendant Schacht.

On May 31st of 1935—as stated earlier in this morning's discussion—the Defendant Schacht was secretly appointed plenipotentiary-general of the war economy, and he had the express function of placing all economic forces of the nation in the services of the Nazi war machine.

By the secret defense law of May 21, 1935, under which Schacht received this secret appointment, he was in effect, given charge of the entire war economy. In case of war, he was to be virtual economic dictator of Germany. His task was to place all economic forces into the service for the conduct of the war and to secure economically the life of the German people. The Ministers of

Economy, of Food, Agriculture, Labor, Forestry, as well as all Reich agencies directly under the Führer, were subordinated to him. He was to be responsible for the financing as well as for the conduct of the war; and he was even authorized to issue ordinances within his sphere of responsibility, even if these deviated from the existing laws.

The rearmament of Germany proceeded at an amazingly rapid pace. By the summer of 1935, the Nazi conspirators were emboldened to make plans for the reoccupation of the Rhineland; and at the tenth meeting of this same working committee of the Council, the question of measures to be taken in connection with the proposed reoccupation of the Rhineland were discussed.

I refer to the document bearing the number EC-405.

At that meeting, held on the 26th day of June 1935, it was said that the Rhineland required special treatment, because of the assurances given by Hitler to the French that no military action was being undertaken in the de-militarized zone. Among the matters requiring special treatment was the preparation of economic mobilization, a task specifically entrusted to the Defendant Schacht, as secret Plenipotentiary for the War Economy.

THE PRESIDENT: Are you reading from this document?

MR. DODD: I am quoting in part from it, Your Honor, and it is upon the document that I base my statements which can be found therein on Pages 4 and 5. I dislike annoying the Court with constant references to these documents, but I thought it would be the best way to proceed so as fully to inform the Court.

THE PRESIDENT: Well if you tell us where it is in the document we can follow it in the document.

MR. DODD: On Page 4, the middle of the page, the fifth paragraph, the first sentence: "The de-militarized zone requires special treatment." And on Page 5, (j), under "the preparations," "Preparation of economic mobilization." On Page 4, the last paragraph just before the setting-out of the (a), (b), (c), and (d), it is said . . .

THE PRESIDENT: I think you ought to read on Page 4, the last paragraph but one: "Since political entanglements . . ."

MR. DODD:

> "Since political entanglements abroad must be avoided at present under all circumstances . . . only those preparatory measures that are urgently necessary may be carried out. The existence of such preparations, or the intention of them must be kept in strictest secrecy in the zone itself as well as in the rest of the Reich."

The preparations are then set out, and they include, as I have indicated a few minutes ago, as the last one in the list, the preparations for economic mobilization.

There are many others, of course. The preliminary mustering of horse-drawn and motor vehicles, preparation for evacuation measures, and so forth. We say—passing now from that document—we say the rapid success of the German re-armament is attributable to the greatest extent to the work of the Defendant Schacht. In the fall of 1934, the Nazi conspirators announced the so-called "New Plan," aiming at the control of imports and exports in order to obtain the raw materials which were needed for armaments and the foreign currency which was required to sustain the armament program. This new plan was the creation of the Defendant Schacht, and under the plan, the Defendant Schacht controlled imports by extending the system of supervisory boards for import control, which was previously limited to the main groups of raw materials, to all goods imported into Germany, whether raw materials, semi-manufactured goods, or finished products. The requirement of licenses for imports enabled the Nazi conspirators to restrict imports to those commodities which served their war aims.

Subsequently, in February of 1935, the "Devisen" Law was passed which can be found by reference in the *Reichsgesetzblatt* of 1935, Part I, Page 105; and under it, all transactions involving foreign exchange were subject to the approval of Devisenstellen (the Foreign Exchange Control Offices). By thus controlling the disposition of foreign exchange, the conspirators were able to manipulate foreign trade so as to serve their needs and desires.

Thus every aspect of the German economy was being geared to war under the guidance particularly of the Defendant Schacht. In a study of the economic mobilization for war as of 30 September. 1934, it was stated that steps had already been taken to build up stock piles, to construct new facilities for the production of scarce goods, and to redeploy industry, to secure areas and to control fiscal and trade policies. References were made to the fact that the task of stock piling had been hampered by the requirement of secrecy and camouflage. Reserves of automobile fuels and stocks of coal were being accumulated and the production of synthetic oil was accelerated. Civilian supply was purposely organized so that most plants would be working for the German Armed Forces. Studies were made of the possibility of barter trade with supposedly neutral countries in case of war.

The matter of financing the armament program presented a difficult problem for the conspirators. In 1934 and 1935 the German economy could by no possibility have raised funds for their exten-

sive rearmament program through taxes and public loans. From the outset, the armament program involved "the engagement of the last reserves."

Apart from the problem of raising the huge sums required to sustain this program, the Nazi conspirators were exceedingly anxious, in the early stages, to conceal the extent of their feverish armament activities.

After considering various techniques of financing the armament program, the Defendant Schacht proposed the use of so-called "mefo" bills. One of the primary advantages of this method was the fact that figures indicating the extent of rearmament that would have become public through the use of other methods could be kept secret through the use of mefo bills, and mefo bills were used exclusively for armament financing.

Transactions in mefo bills worked as follows:

Mefo bills were drawn by armament contractors and accepted by a limited liability company, *[The Metallurgische Forschungsgesellschaft m. b. H.]*, the initials of which spell mefo from whence the transaction takes its name. This company had a nominal capital of 1 million Reichsmarks and was therefore merely a dummy organization. The bills were received by all German banks for possible rediscounting with the Reichsbank, and the bills were guaranteed by the Reich. Their secrecy was assured by the fact that they appeared neither in the published statements of the Reichsbank nor in the budget figures.

The mefo bill system continued to be used until April 1 of 1938. To that date, 12 billion Reichsmarks of mefo bills for the financing of rearmament had been issued. Since it was no longer deemed necessary in April of 1938 to conceal the vast progress of German rearmament, mefo financing was discontinued at that time.

A further source of funds which the Defendant Schacht drew upon to finance the Secret Armament Program were the funds of political opponents of the Nazi regime, and marks of foreigners on deposit in the Reichsbank. As Schacht stated—and I am quoting: "Our armaments are also financed partly with the credits of our political opponents."

That statement may be found in a memorandum from the Defendant Schacht to Hitler, dated 3 May 1935, and it bears the number in the document book of 1168-PS, and the specific sentence is found in the second paragraph.

The outstanding mefo bills at all times represented a threat to the stability of the currency because they could be tendered to the Reichsbank for discount, in which case the currency circulation would automatically have to be increased. Thus, there was an ever-present threat of inflation. The Defendant Schacht continued on his

course, because he stands, he said, "with unswerving loyalty to the Führer because he fully recognizes the basic ideas of National Socialism and because at the end, the disturbances, compared to the great task, can be considered irrelevant."

High-ranking military officers paid tribute to the Defendant Schacht's contrivances on behalf of the Nazi war machine. In an article written for the *Military Weekly Gazette* in January of 1937, it is said:

> "The German Defense Force commemorates Dr. Schacht today as one of the men who have done imperishable things for it and its development in accordance with the directions from the Führer and Reich Chancellor. The Defense Force owes it to Schacht's skill and great ability that, in defiance of all currency difficulties, it, according to plan, has been able to grow up to its present strength from an army of 100,000 men."

After the reoccupation of the Rhineland, the Nazi conspirators re-doubled their efforts to prepare Germany for a major war. The Four Year Plan, as we have indicated earlier, was proclaimed by Hitler in his address at the Nuremberg Party convention on the 9th day of September in 1936, and it was given a statutory foundation by the decree concerning the execution of the Four Year Plan dated the 18th day of October, 1936, which is found in the *Reichsgesetzblatt* of 1936, in the first part, on Page 887. By this decree the Defendant Göring was put in charge of the plan. He was authorized to enact any legal and administrative measures deemed necessary by him for the accomplishment of his task, and to issue orders and instructions to all Government agencies, including the highest Reich authorities.

The purpose of the plan was to enable Nazi Germany to attain complete self-sufficiency in essential raw materials, notably motor fuel, rubber, textile fiber, and non-ferrous metals, and to intensify preparations for war. The development of synthetic products was greatly accelerated despite their high costs.

Apart from the self-sufficiency program, however, the Nazi conspirators required foreign exchange to finance propaganda and espionage activities abroad. Thus, in a speech on November 1 of 1937, before the Wehrmachtakademie, General Thomas stated:

> "If you consider that one will need during the war considerable means in order to organize the necessary propaganda in order to pay for the espionage service and for similar purposes, then one should be clear that our internal mark would be of no use therefore, and that foreign exchange will be needed."

This particular need for foreign exchange was reduced in part by the virtue of the espionage and propaganda services rendered free of charge to the Nazi State by some leading German industrial concerns.

I hold in my hand a document bearing the number D-206. It is dated at Essen the 12th day of October 1935. It was found in the files of the Krupp Company by representatives of the United States and the British armies. I shall not read all of it unless Your Honors require it, but I'll start at the beginning by way of establishing its purpose and the information contained therein. It is entitled "Memorandum." There is a subheading: "Concerns: Distribution of official propaganda literature abroad with the help of our foreign connections." It goes on to say that:

> "On the morning of October 11 the district representative of Ribbentrop's private foreign office (Dienststelle Ribbentrop) made an appointment for a conference by telephone."—and that—"A Mr. Lackmann arrived at the appointed time . . .
>
> "In answer to my question with whom I was dealing, and which official bureau he represented, he informed me that he was not himself the district representative of Ribbentrop's private foreign office, that a Mr. Landrat Bollmann was such, and that he himself had come at Mr. Bollmann's order."

The next paragraph states:

> ". . . that there exists a great mixup in the field of foreign propaganda, and that Ribbentrop's private foreign office wants to create a tighter organization for foreign propaganda. For this purpose the support of our firm and above all an index of addresses . . . were needed."

In the next sentence, of the third paragraph, I would like to read:

> "I informed Mr. L that our firm had put itself years ago at the disposal of official bureaus for purposes of foreign propaganda, and that we had supported all requests addressed to us to the utmost."

I now hold in my hand the document bearing the number D-167, which is also a copy of a document found in the files of the Krupp Company by representatives of the American and the British Armies. It is dated the 14th day of October 1937, and states that it is a memorandum of Herr Sonnenberg on the meeting at Essen on the 12th day of October 1937 and it indicates that one Menzel representing the intelligence of the Combined Services Ministry, his department coming under the Defense Office, asked for intelligence on foreign armaments, but not including matters published in newspapers, intelligence received by Krupp from their agents abroad

and through other channels to be passed on to the Combined Services Intelligence.

Finally, the third paragraph states that: "On our part we undertook to supply information to the Combined Services Ministry . . . as required."

I have concluded reading from that document, and I pass now to discuss the conspirators' program, which proceeded, as I have said so many times here today, with amazing—really amazing speed. The production of steel, for example, as shown in official German publications, rose as follows:

In the year of 1933, 74,000 tons were produced; in 1934, 105,000 tons; 1935, 145,000 tons; 1936, 186,000 tons; 1937, 217,000 tons; and in 1938, 477,000 tons. The production of gasoline increased at even a greater tempo: from 370,000 tons in 1934 to 1,494,000 tons in 1938.

The Nazi conspirators pressed the completion of the armament program with a sense of urgency which clearly indicated their awareness of the imminence of war. At a 4th of September meeting in 1936 Göring pointed out that "all measures have to be taken just as if we were actually in the state of imminent danger of war." He pointed out that "if war should break out tomorrow we would be forced to take measures from which we might . . . shy away at the present moment. They are therefore to be taken." The extreme urgency was manifested by Göring's remark that "Existing reserves will have to be touched for the purpose of carrying us over this difficulty until the goal ordered by the Führer has been reached . . . in case of war," he added, "they are not a reliable backing in any case."

By a letter marked "Top Secret", on the 21 of August of 1936, the Defendant Schacht was advised that Hitler had ordered that all formations of the Air Force be ready by April 1 of 1937. This served to accentuate the urgent sense of immediacy that had pervaded the Nazi war economy from the outset. Flushed with their successes in the Rhineland, the Nazi conspirators were laying the groundwork for further aggressive action.

THE PRESIDENT: Insofar as I understand you, you have not referred us to any document since Document 167.

MR. DODD: No, Your Honor, the figures on the production of steel and of oil are from the statistical year book for the German Reich of 1939 and 1940 and the statistical year book for the German Reich of 1941 and '42—that is, with respect to the steel figures. And the figures which I quoted with respect to the production of gasoline are from the statistical year book for the German Reich in 1941 and 1942. The statements of the Defendant Göring are based upon the document marked EC-416, in the document book.

THE PRESIDENT: That is the document you have already referred to, isn't it?

MR. DODD: Yes, it has been referred to heretofore, I believe. Some of these documents contain references to more than one part of the presentation, and I have to refer to them at different times in the presentation...

THE PRESIDENT: All right. Go on, if you want to refer to it.

MR. DODD: The sixth paragraph on the first page:

"Existing reserves will have to be touched for the purpose of carrying us over this difficulty until the goal ordered by the Führer has been reached, and then in case of war, they are not a reliable backing in any case."

And on the second page, the eighth paragraph down:

"If war should break out tomorrow, we would be forced to take measures from which we might possibly still shy away at the present moment. They are therefore to be taken."

With reference to the assertion that the Defendant Schacht was advised that Hitler had ordered that all formations of the Air Force be ready by April 1, 1937, I respectfully refer to Document 1301-PS, dated 31 August 1936. I am advised that that document should bear an additional number. It should read 1301-PS-7. On the first page, if Your Honor pleases, the third paragraph, or the paragraph marked "3" and after the words "air force"... states that according to an order of the Führer, the setting up of all Air Force units had to be completed on April 1, 1937; and if Your Honors will turn the page to Page 20, about midway in the page, you will observe that a copy of this document was sent to the president of the Reichsbank, Dr. Schacht.

After their successes in Austria and in the Sudetenland, the Nazi conspirators redoubled their efforts to equip themselves for a war of aggression, and in a conference on October 14, 1938, shortly before the Nazi conspirators made their first demands on Poland, the Defendant Göring stated that the Führer had instructed him to carry out a gigantic program, by comparison with which the performances thus far were insignificant. This faced difficulties which he would overcome with the greatest energy and ruthlessness. And that statement may be found in the Document 1301-PS, on Page 25 of that document, and particularly the second sentence of the opening paragraph:

"Everybody knows from the press what the world situation looks like, and therefore the Führer has issued an order to him to carry out a gigantic program compared to which previous achievements are insignificant. There are difficulties

in the way which he will overcome with the utmost energy and ruthlessness."

The supply of foreign currency had shrunk because of preparations for the invasion of Czechoslovakia, and it was considered necessary to replenish it. "These"—and I am now referring to the third paragraph of that same Page 25 of Document 1301-PS:

"These gains made through the export are to be used for an increased armament. The armament should not be curtailed by the export activities. He received the order from the Führer to increase the armament to an abnormal extent, the Air Force having first priority. Within the shortest time, the Air Force is to be increased fivefold; also the Navy should get on more rapidly, and the Army should procure large amounts of offensive weapons at a faster rate, particularly heavy artillery pieces and heavy tanks. Along with this manufactured armaments must go, especially fuel, powder and explosives are to be moved into the foreground. It should be coupled with the accelerated construction of highways, canals, and particularly of the railroads."

In the course of these preparations for war, a clash of wills ensued between two men, the Defendant Göring and the Defendant Schacht, as a result of which the Defendant Schacht resigned his position as head of the Ministry of Economics and plenipotentiary for the war economy in November of 1937 and was removed from the presidency of the Reichsbank in January of 1939. I do not propose, at this moment, to go into the details of this controversy. There will be more said on that subject at a later stage in these proceedings, but for the present, I should like to have it noted that it is our contention that Schacht's departure in no way implied any disagreement with the major war aims of the Nazis. The Defendant Schacht took particular pride in his vast attainments in the financial and economic fields in aid of the Nazi war machine. And in the document bearing the number EC-257, which is a copy of a letter from the Defendant Schacht to General Thomas, in the first paragraph of the letter:

"I think back with much satisfaction to the work in the Ministry of Economics which afforded me the opportunity to assist in the rearmament of the German people in the most critical period, not only in the financial but also in the economic sphere. I have always considered a rearmament of the German people as *conditio sine qua non* of the establishment of a new German nation."

The second paragraph is of a more personal nature and has no real bearing on the issues before us at this time.

In the document labeled EC-252, a letter written to General Von Blomberg, dated the 8th day of July 1937, the Defendant Schacht wrote:

> "The direction of the war economy by the plenipotentiary would in that event never take place entirely independent from the rest of the war mechanism, but would be aimed at accomplishment of the political war purpose with the assistance of all economic forces. I am entirely willing, therefore, to participate in this way in the preparation of the forthcoming order giving effect to the Defense Act."

In the spring of 1937, the Defendant Schacht participated with representatives of the three branches of the Armed Forces in war games in war economy which was something new by way of military exercises. The war games in war economy were held at Godesberg, Germany. And I refer to the document bearing the label EC-174. It has as a heading, or subheading, under the summary: "War economy trip to Godesberg undertaken by General Staff between the 25th of May and the 2d of June," and it goes on to outline in some slight detail that there was a welcome to the General Staff war economy trip. It tells something in a rather vague and not altogether clear way of just how a war game in war economy was conducted but it leaves no doubt in the mind that such a war game in war economy had been conducted at Godesberg at that time. And on the second page of this document, the last paragraph is the translation of Part 1 of the speech welcoming Dr. Schacht. It says:

> "Before I start with the discussion of the war game in war economy, I have to express how grateful we all are that you, President Dr. Schacht, have gone to the trouble to personally participate in our final discussion today despite all your other activities. This proves to us your deep interest in war economy tasks shown at all times and your presence here is renewed proof that you are willing to facilitate for us soldiers the difficult war-economic preparations and to strengthen a harmonious cooperation with your offices."

I should also like to call the Court's attention to the next to the last paragraph on the first page. It is a one-sentence paragraph, and it simply says, "I want to point out, however, that all material and all information received has to be kept in strict secrecy," and it refers to the preceding paragraph concerning the war games in war economy.

It appears that the annexation of Austria was a goal which the Defendant Schacht had long sought, for in a speech to the employees of the former Austrian National Bank, as set out in the document

bearing the label EC-297, and particularly the second paragraph of the first page of that document, nearly at the end, four or five lines from the end of that paragraph, we find these words immediately after "large applause":

"Austria has certainly a great mission, namely, to be the bearer of German culture, to insure respect and regard for the German name, especially in the direction of the south-east. Such a mission can only be performed within the Great German Reich and based on the power of a nation of 75 millions, which, regardless of the wish of the opponents, forms the heart and the soul of Europe."

Dr. Schacht goes on to say:

"We have read a lot in the foreign press during the last few days that this aim, the union of both countries, is to a certain degree justified, but that the method of effecting this union was terrible .... This method, which certainly did not suit one or another foreigner, is nothing but the consequence of countless perfidies and brutal acts of violence which foreign countries have practiced against us."

And I refer now to Page 3 of this same document and to the fourth paragraph, about the center of the page, and reading from it:

"I am known for sometimes expressing thoughts which give offense and there I would not like to depart from this custom. I know that there are even here, in this country a few people —I believe they are not too numerous—who find fault with the events of the last few days; but nobody, I believe, doubts the goal, and it should be said to all grumblers that you can't satisfy everybody. One person says he would have done it maybe in one way, but the remarkable thing is that they did not do it, and that it was only done by our Adolf Hitler; and if there is still something left to be improved, then those grumblers should try to bring about these improvements from the German Reich, and within the German community, but not to disturb it from without."

In the memorandum of the 7th of January 1939, written by the Defendant Schacht and other directors of the Reichsbank to Hitler, urging a balancing of the budget in view of the threatening danger of inflation, it was stated—and I now refer to the document bearing the label EC-369 and particularly to the paragraph at the bottom of the first page of that document:

"From the beginning the Reichsbank has been aware of the fact that a successful foreign policy can be attained only by the reconstruction of the German Armed Forces. It (the

Reichsbank) therefore assumed to a very great extent the responsibility to finance the rearmament in spite of the inherent dangers to the currency. The justification thereof was the necessity, which pushed all other considerations into the background, to carry through the armament at once, out of nothing, and furthermore under camouflage, which made a respect-commanding foreign policy possible."

The Reichsbank directors, as experts on money, believed that a point had been reached where greater production of armaments was no longer possible. We say that was merely a judgment on the situation and not a moral principle, for there was no opposition to Hitler's policy of aggression. Doubts were ascertained only as to whether he could finance that policy. Hitler's letter to Schacht on the occasion of Schacht's departure from the Reichsbank, as contained in Document EC-397, pays high tribute to Schacht's great efforts in furthering the program of the Nazi conspirators. The Armed Forces by now had enabled Hitler to take Austria and the Sudetenland. We say Schacht's task up to that point had been well done. And to quote from Document EC-397 in the words of Hitler, in a letter which he wrote to the Defendant Schacht, "Your name, above all, will always be connected with the first epoch of the national rearmament."

Even though dismissed from the presidency of the Reichsbank, Schacht was retained as a Minister without portfolio and special confidential adviser to Hitler. The Defendant Funk stepped into Schacht's position as President of the Reichsbank. And I ask at this point that the Court might take judicial notice of the *Völkischer Beobachter* of January 21, 1939. The Defendant Funk was completely uninhibited by fears of inflation, for like Göring, under whom he had served in the Four Year Plan, he recognized no obstacles to the plan to attack Poland.

In Document 699-PS, in a letter from the Defendant Funk to Hitler, written on August 25 of 1939, only a few days before the attack on Poland, the Defendant Funk reported to Hitler that the Reichsbank was prepared to withstand any disturbances of the international currency and credit system occasioned by a large-scale war. He said that he had secretly transferred all available funds of the Reichsbank abroad into gold, and that Germany stood ready to meet the financial and economic tasks which lay ahead.

And so it seems plain and clear from the writings, from the acts, from the speeches of the Nazi conspirators themselves, that they did in fact direct the whole of the German economy toward preparation for aggressive war. To paraphrase the words that the Defendant Göring once used, these conspirators gave the German

people "guns instead of butter," and we say they also gave history its most striking example of a nation gearing itself in time of peace to the single purpose of aggressive war. Their economic preparations, formulated and applied with the ruthless energy of the Defendant Göring, with the cynical financial wizardry of the Defendant Schacht, and the willing complicity of Funk, among others, were the indispensable first act in the heart-breaking tragedy which their aggression inflicted upon the world.

I should like to offer, if I may at this time, Your Honor, those documents which I have referred to in the course of this discussion. We have here the original documents in the folders, and they compare with the translations which have been submitted to the Court.

THE PRESIDENT: Have the defendants had the opportunity of inspecting these documents?

MR. DODD: I doubt that they have had full opportunity to inspect them, Your Honor. The photostats are there, but I don't think they have had time to inspect them because they haven't been there long enough for that.

THE PRESIDENT: I think that they should have full opportunity of inspecting them and comparing with the copies which have been submitted to us before the originals are put in.

MR. DODD: Very well, Your Honor. We may offer them at a later date, as I understand, Your Honor?

THE PRESIDENT: Certainly. The Tribunal will adjourn for 10 minutes.

[A recess was taken.]

COLONEL STOREY: May it please the Tribunal: The U. S. Prosecution now passes into the aggressive war phase of the case and it will be presented by Mr. Alderman.

MR. ALDERMAN: May it please the Tribunal: I rise to present on behalf of the United States Chief of Counsel, evidence to support the allegation of Count One of the Indictment relating to the planning, preparation, initiation, and waging of illegal and aggressive war, and relating to the conspiracy to commit that crime.

The aggressive war phase of the case, the aggressive war phase of the conspiracy case under Count One, and the aggressive war phase of the entire case is really, we think, the heart of the case. If we did not reach it in our presentation we would not reach the heart of the case. If we did not present it to the Tribunal in the necessary detail, we would fail to present what is necessary to the heart of the case.

After all, everything else in this case, however dramatic, however sordid, however shocking and revolting to the common instincts of civilized peoples, is incidental to, or subordinate to, the aggressive war aspect of the case.

All the dramatic story of what went on in Germany in the early phases of the conspiracy—the ideologies used, the techniques of terror used, the suppressions of human freedom employed in the seizure of power, and even the concentration camps and the Crimes against Humanity, the persecutions, tortures, and murders committed—all these things would have little juridical international significance except for the fact that they were the preparation for the commission of aggressions against peaceful neighboring peoples.

Even the aspects of the case involving War Crimes in the strict sense are aspects which are merely the inevitable, proximate result of the wars of aggression launched and waged by these conspirators, and of the kind of warfare they waged—that is—total war, the natural result of the totalitarian party-dominated state that waged it, and atrocious war, the natural result of the atrocious doctrines, designs, and purposes of these war-makers.

For these reasons, I repeat that in our view the phases of the case dealing with territorial gains acquired by threats of force and with actual aggressions and aggressive wars constitute the real heart of the case. Accordingly, we ask the indulgence of the Tribunal, if for these reasons we make the presentation of this part of the case as detailed as seems to us necessary in view of the outstanding importance of the subject matter.

The general scope of the case to be presented by the American Prosecution has been stated in the opening address by Mr. Justice Jackson. That address indicated to the Tribunal the general nature and character of the evidence to be offered by the American Prosecution in support of the allegations with which I shall deal. However, before approaching the actual presentation of that evidence, it seems to us that it would be helpful to an orderly presentation of the case, to address the Tribunal in an introductory way concerning this specific segment of the Prosecution's case. In doing so, I shall not attempt to retrace the ground so ably covered by Mr. Justice Jackson. On the contrary, I shall confine my introductory remarks to matters specifically and peculiarly applicable to that part of the American case relating to the crime of illegal warfare, and the Common Plan or Conspiracy to commit that crime.

The substantive rule of law which must guide the considerations of the Tribunal on this aspect of the case, and the rule of law which must be controlling in the final judgment of the Tribunal on this part of the case, is stated in Article 6 of the Charter of the Inter-

national Military Tribunal. Article 6, so far as pertinent here, reads as follows:

> "*Article 6.* The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.
>
> "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:
>
> "(a) *CRIMES AGAINST PEACE:* namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing . . ."

Subparagraphs (b) and (c) of Article 6 are not pertinent to this aspect of the case. However, the unnumbered final paragraph of Article 6 is of controlling importance on this aspect of the case. That paragraph reads:

> "Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a Common Plan or Conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

In receiving evidence on this aspect of the case I would request the Tribunal to have in mind five principles derived from the portions of the Charter I have just read:

(1) The Charter imposes "individual responsibility" for acts constituting "Crimes against Peace";

(2) The term "Crimes against Peace" embraces planning, preparation, initiation, or waging of illegal war;

(3) The term "Crimes against Peace" also embraces participation in a Common Plan or Conspiracy to commit illegal war;

(4) An illegal war consists of either a war of aggression, or a war in violation of international treaties, agreements, or assurances. These two kinds of illegal war might not necessarily be the same. It will be sufficient for the Prosecution to show that the war was aggressive irrespective of breach of international treaties, agreements, or assurances. On the other hand it would be sufficient for the Prosecution to show that the war was in violation of international treaties, agreements, or assurances irrespective of whether

or not it was a war of aggression. We think the evidence in this case will establish conclusively that the wars planned, prepared, initiated, and waged by these defendants, and the wars which were the object of their common plan and conspiracy, were illegal for both reasons.

The fifth principle which I ask you to bear in mind, is that individual criminal responsibility of a defendant is imposed by the Charter not merely by reason of direct, immediate participation in the crime. It is sufficient for the Prosecution to show that a defendant was a leader, an organizer, instigator, or accomplice who participated either in the formulation or in the execution of a Common Plan or Conspiracy to commit Crimes against Peace. In the case of many of the defendants the evidence will show direct and immediate personal participation in the substantive crime itself. In the case of some of the defendants the evidence goes to their participation in the formulation and execution of a Common Plan or Conspiracy. In the case of each defendant, we think, the evidence will establish full individual responsibility for Crimes against Peace, as defined in the Charter of this Tribunal. In this connection I wish to emphasize that the Charter declares that the responsibility of conspirators extends not only to their own acts, but also to all acts performed by any persons in execution of the conspiracy.

It is familiar law in my country that if two or more persons set out to rob a bank, in accordance with a criminal scheme to that end, and in the course of carrying out their scheme one of the conspirators commits the crime of murder, all of the participants in the planning and execution of the bank robbery are guilty of murder, whether or not they had any other personal participation in the killing. This is a simple rule of law declared in the Charter. All the parties to a Common Plan or Conspiracy are the agents of each other and each is responsible as principal for the acts of all the others as his agents.

So much for the terms of the Charter having a bearing on this aspect of the case.

I invite the attention of the Tribunal to the portions of the Indictment lodged against the defendants on trial which relate to the crimes of illegal war or war of aggression. Particularly I ask the Tribunal to advert to the statements of offense under Count One and Count Two of the Indictment in this case.

The statement of offense under Count One of the Indictment is contained in Paragraph III. The offense there stated, so far as pertinent to the present discussion, is:

"All the defendants, with divers other persons, during a period of years preceding 8th May 1945, participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a Common Plan or Conspiracy to commit, or which involved the commission of, Crimes against Peace, as defined in the Charter of this Tribunal.... The Common Plan or Conspiracy embraced the commission of Crimes against Peace, in that the defendants planned, prepared, initiated, and waged wars of aggression, which were also wars in violation of international treaties, agreements, or assurances."

The statement of offense under Count Two of the Indictment is also relevant at this point. It must be obvious that essentially Counts One and Two interlock in this Indictment. The substance of the offense stated under Count Two, Paragraph V of the Indictment is this:

"All the defendants with divers other persons, during a period of years preceding 8 May 1945, participated in the planning, preparation, incitation, and waging of wars of aggression which were also wars in violation of international treaties, agreements, and assurances."

The emphasis in the statement of offense under Count One of the Indictment is on the Common Plan or Conspiracy. The emphasis under Count Two of the Indictment is on the substantive crimes to which the conspiracy related and which were committed in the course of and pursuant to that conspiracy.

I should hasten to add at this point that in the division of the case as between the Chief Prosecutors of the four Prosecuting Governments, primary responsibility for the presentation of evidence supporting Count One has been placed on the American prosecutor, and primary responsibility for the presentation of the evidence supporting Count Two of the Indictment has been placed on the British prosecutor.

But as we shall show somewhat later, there will to some extent be a cooperative effort as between the two prosecutors to present certain phases of both counts together. In addition to the statement of offense relating to illegal war in Paragraph III under Count One of the Indictment, Count One also contains what amounts to a bill of particulars of that offense. In so far as those particulars relate to illegal war, they are contained in Paragraph IV (F) of the Indictment which is set out in the English text on Page 7 through the top of Page 10 under the general heading "Utilization of Nazi Control for Foreign Aggression." The allegations of this bill of particulars have been read in open court,

in the presence of the defendants, and the Tribunal, as well as the defendants, are certainly familiar with the contents of those allegations. I call attention to them now, however, in order to focus attention on the parts of the Indictment which are relevant in consideration of the evidence which I intend to bring before the Tribunal.

My introduction to the presentation of evidence in this matter would be faulty if I did not invite the Tribunal to consider with me the relationship between history and the evidence in this case. Neither counsel nor Tribunal can orient themselves to the problem at hand—neither counsel nor Tribunal can present or consider the evidence in this case in its proper context, neither can argue or evaluate the staggering implications of the evidence to be presented—without reading that history, reading that evidence against the background of recorded history. And by recorded history, I mean the history merely of the last 12 years.

Justice Oliver Wendell Holmes, of the U. S. Supreme Court, found in his judicial experience that "a page of history is worth a volume of logic." My recollection is that he stated it perhaps better, earlier in the preface to his book on the common law where he said, I think, "The life of the law has been not logic but experience." I submit that in the present case a page of history is worth a hundred tons of evidence. As lawyers and judges we cannot blind ourselves to what we know as men. The history of the past 12 years is a burning, living thing in our immediate memory. The facts of history crowd themselves upon us and demand our attention.

It is common ground among all systems of jurisprudence that matters of common knowledge need not be proved, but may receive the judicial notice of courts without other evidence. The Charter of this Tribunal, drawing on this uniformly recognized principle, declares in Article 21:

> "The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof."

The facts of recorded history are the prime example of facts of common knowledge which require no proof. No court would require evidence to prove that the Battle of Hastings occurred in the year 1066, or that the Bastille fell on the 14th of July 1789, or that Czar Alexander I freed the serfs in 1863, or that George Washington was the first President of the United States or that George III was the reigning King of England at that time.

If I may be allowed to interpolate, an old law professor of mine used to present the curiosity of the law: that a judge is held to responsibility for no knowledge of the law whatsoever, that a

lawyer is held to a reasonable knowledge of the law, and a layman is held to an absolute knowledge of all the laws. It works inversely as to facts, or facts of common knowledge. There, the judge is imputed to know all of those facts, however many of them he may have forgotten as an individual man. So one of the purposes of this presentation will be to implement the judicial knowledge which by hypothesis exists, and which probably actually exists.

It is not our purpose however, to convert the record of these proceedings into a history book. The evidence which we offer in this case is evidence which for the moment has been concealed from historians. It will fill in recorded history, but it must be read against the background which common knowledge provides. The evidence in this case consists primarily of captured documents. These documents fill in the inside story underlying the historical record which we all already knew. This evidence which we will offer constitutes an illustrative spot check on history — on the history of the recent times as the world knows it. The evidence to be offered is not a substitute for history. We hope the Tribunal will find it to be an authentication of history. The evidence which we have drawn from captured documents establishes the validity of the recent history of the past 12 years — a history of many aggressions by the Nazi conspirators accused in this case.

As I offer to the Tribunal document after document, I ask the Court to see in those documents definite additions to history, the addition of new elements long suspected and now proved. The elements which the captured documents on this particular aspect of the case will add to recorded history are the following:

(1) The conspiratorial nature of the planning and preparation which underlay the Nazi aggressions already known to history;

(2) The deliberate premeditation which preceded those acts of aggression;

(3) The evil motives which led to the crimes;

(4) The individual participation of named persons in the Nazi conspiracy for aggression;

(5) The deliberate falsification of the pretexts claimed by the Nazi aggressors as the reasons for their criminal activities.

These elements the captured documents will demonstrate beyond possible doubt, and these elements, in the context of historical facts, we think are all that need to be shown.

The critical period between the Nazi seizure of power and the initiation of the first war of aggression was a very short period. This critical period of a lawless preparation and illegal scheming which ultimately set the whole world aflame was unbelievably short. It covered only 6 years, 1933 to 1939. The speed with which

all this was accomplished evidences at once the fanatical intensity of the conspirators and their diabolical efficiency. Crowded into these 6 short years is the making of the greatest tragedy that has ever befallen mankind.

A full understanding of these 6 years, and of the vibrant 6 years of war that followed, demands that we see this period of time divided into rather definite phases, phases that reflect the development and execution of the Nazi master plan. I suggest that the Tribunal as it receives evidence, fit it into five phases. The first was primarily preparatory, although it did involve overt acts. That phase covers roughly the period from 1933 to 1936. In that period the Nazi conspirators, having acquired governmental control of Germany by the middle of 1933, turned their attention toward utilization of that control for foreign aggression. Their plan at this stage was to acquire military strength and political bargaining power to be used against other nations. In this they succeeded. The second phase of their aggression was shorter. It is rather interesting to see that as the conspiracy gained strength it gained speed. During each phase the conspirators succeeded in accomplishing more and more in less and less time until, toward the end of the period, the rate of acceleration of their conspiratorial movement was enormous. The second phase of their utilization of control for foreign aggression involved the actual seizure and absorption of Austria and Czechoslovakia in that order. By March, the third month of 1939, they had succeeded in that phase. The third phase may be measured in months rather than years: from March 1939 to September 1939. The previous aggression being successful, having been consummated without the necessity of resorting to actual war, the conspirators had obtained much desired resources and bases and were ready to undertake further aggressions, by means of war if necessary. By September 1939 war was upon the world. The fourth phase of the aggression consisted of expanding the war into a general European war of aggression. By April 1941 the war which had theretofore involved Poland, the United Kingdom, and France, had been expanded by invasions into Scandinavia and into the Low Countries and into the Balkans. In the next phase the Nazi conspirators carried the war eastward by invasion of the territory of the Union of Soviet Socialist Republics, and finally, through their Pacific ally, Japan, precipitated the attack on the United States at Pearl Harbor.

The final result of these aggressions is fresh in the minds of all of us.

I turn now to certain outstanding evidence at hand. While on this phase of the case we shall not rest exclusively on them alone;

the essential elements of the crime which I have already pointed out can be made out by a mere handful of captured documents. My order of presentation of these will be first to present one by one this handful of documents, documents which prove the essential elements of the case on aggressive war up to the hilt. These documents will leave no reasonable doubt concerning the aggressive character of the Nazi war or concerning the conspiratorial premeditation of that war. Some of this group of documents are the specific basis for particular allegations in the Indictment. As I reach those documents, I shall invite the attention of the Tribunal to the allegations of the Indictment which are specifically supported by them. Having proved the corpus of the crime in this way, I will follow the presentation of this evidence with a more or less chronological presentation of the details of the case on aggressive war producing more detailed evidence of the relevant activities of the conspirators from 1933 to 1941.

The documents which we have selected for single presentation at this point, before developing the case in detail, are 10 in number. The documents have been selected to establish the basic facts concerning each phase of the development of the Nazi conspiracy for aggression. Each document is conspiratorial in nature. Each document is one, I believe, heretofore unknown to history and each document is self-contained and tells its own story. Those are the three standards of selection which we have sought to apply.

I turn to the period of 1933 to 1936, a period characterized by an orderly, planned sequence of preparations for war. This is the period covered by Paragraphs 1 and 2 of Section IV (F) of the Indictment, to be found at Page 7 of the printed English text. The essential character of this period was the formulation and execution of the plan to re-arm and to re-occupy and fortify the Rhineland, in violation of the Treaty of Versailles and other treaties, in order to acquire military strength and political bargaining power to be used against other nations.

If the Tribunal please, we have what have been referred to as document books. They are English translations of German documents, in some cases German versions. I shall ask that they be handed up and we will hand one copy at the moment to counsel for the defendants. It has been physically impossible to prepare 21 sets of them. If possible we shall try to furnish further copies to the defendants, the original German documents . . .

DR. DIX: I would be very much obliged. In order that there should be no misunderstanding we have arranged that tomorrow we will discuss with the Prosecution in what way the whole of the evidence may be made available to all the Defense Counsel.

It is, of course, necessary that no one should have the advantage over the other. For this reason, while I appreciate the good will of the Prosecution to overcome the difficulties, I must refuse their kind offer of a copy of the book, because I feel that in so doing I would have an unfair advantage over the others. I am not in a position during the proceedings to hand the evidentiary document to my colleagues. I ask you therefore to appreciate the reasons why I have refused this document. I am convinced that tomorrow we shall be able to agree about the way in which we can receive evidence, and I suggest that today we try to continue as we have done up to now.

THE PRESIDENT: Mr. Alderman, can you inform the Tribunal how many copies of these documents you will be able to furnish to the Tribunal by Monday?

MR. ALDERMAN: I cannot at the moment. If Your Honor pleases: may I make this suggestion in connection with it, which I think may be of help to all concerned? I think many of us have underestimated the contribution of this interpreting system to this Trial. We all see how it has speeded the proceeding, but in so far as my presentation of German documents is concerned, I shall let the documents speak. I expect to read the pertinent parts of the documents into the system so that they will go into the transcript of record. Counsel for the German defendants will get their transcripts in German; our French and Russian Allies will get their transcripts in their language, and it seems to me that that is the most helpful way to overcome this language barrier. I can recognize that for Dr. Dix to receive a volume of documents which are English translations of German documents might not seem very helpful to him. Further, as an aid, we will have original German documents in court—one copy; and if the Court will allow, I would ask that the original German document, from which I shall read, would be passed to the German interpreter under Colonel Dostert, so that instead of undertaking to translate an English translation back into perhaps a bad German, he will have the original German document before him and in that way, the exact German text will be delivered in the daily transcript to all of the counsel for the defendants. I hope that may be a helpful suggestion.

THE PRESIDENT: That to some extent depends, does it not, upon how much of the document you omit?

MR. ALDERMAN: That is quite true, Sir. As to these 10 documents with which I propose to deal immediately, I expect to read into the transcript practically the whole of the documents, because the whole of them is significant, much more significant than any-

thing I could say. Also all of these 10 documents were listed in the list of documents which we furnished counsel for the defendants, I believe, the 1st of November.

THE PRESIDENT: You say that they were...

MR. ALDERMAN: In the list. But of course I recognize that a list of documents is very different from the documents themselves.

THE PRESIDENT: Are the documents very long?

MR. ALDERMAN: Some of them are very long and some of them are very short; you can't generalize. Whenever it is a speech of Adolf Hitler you can count it is fairly long.

THE PRESIDENT: Can you not by Monday have in the hands of every member of the Defense Counsel copies of these 10 documents? It is suggested to me that photostating could be done quite easily.

MR. ALDERMAN: I understand that both our photostatic facilities and our mimeographing facilities are right up to the hilt with work. It is a very difficult mechanical problem.

COL. STOREY: If the Tribunal please: In further explanation, the documents which Mr. Alderman intends to offer were on the defendants' list filed in the Document Center on the 1st day of November 1945. Lieutenant Barrett had 23 copies of each one photostated as far as he could on that list. Six copies went into the defendants' Information Center. Now, we can't say at this time whether six copies—that is photostatic copies of each one—have been furnished to the defendants, but whenever they wanted copies of any particular one, either the original was exhibited to them or photostatic copies were made.

Again, Sir, I call attention to the physical problems that are almost insurmountable: to make 23 photostatic copies which are required of every document. Now then, Sir . . .

THE PRESIDENT: If I may interrupt you, I imagine that the list which was deposited on the 1st of November didn't contain only these 10 documents but contained a great number of other documents.

COL. STOREY: That is correct, Sir.

THE PRESIDENT: So that the defendants' counsel wouldn't know which out of that list of documents were going to be relied upon.

COL. STOREY: Except, Sir, they were notified that the Prosecution would use all or some of those documents if necessary,

and if the copies were not furnished upon request, they have been made and delivered to them.

May I say, Sir, that working 24 hours a day, we are trying to furnish 10 sets of all of these to defendants' counsel, and they will be... One complete set was delivered to defendants' counsel here now as a convenience to follow. The other sets, I feel certain, will be in their hands sometime Sunday, but one complete list we now turn over to them—not a list, complete copies.

DR. WALTER SIEMERS (Counsel for Defendant Raeder): I should like to point out one fact. The Prosecution declared this morning that the documents that will be put before us today are contained in the list which was submitted on the 1st of November, that is—in the list which was submitted this morning. This morning a list was made available to us in room 54. I have it in my hand. This morning nine documents were named. Of these nine documents, only one, contrary to what the Prosecution said, was found in the old list; the other eight documents were neither in the old list nor in the new list. The eight other documents are, as I ascertained at lunch time today, not in the document room. Neither are they available in photostatic copies, so they could not be made available to me. I think, gentlemen, that it will not be possible for us to work on this basis. I therefore request that we should be allowed to wait until we know the result of the discussion which we are told will take place tomorrow with the Prosecution, so that we may then...

THE PRESIDENT: The Tribunal proposes to adjourn now and to give Defense Counsel the opportunity of meeting Counsel for the Prosecution tomorrow morning. Both Counsel for the Prosecution and Defense Counsel appear to be perfectly ready to make every possible effort to deal with the case in the most reasonable way, and at that meeting you will be able to discuss these documents which you say have been omitted and the Counsel for the Prosecution will try to satisfy you with reference to the other documents.

DR. SIEMERS: Yes, I have one more request. The Prosecution has just said that it will hardly be possible to make 23 photostatic copies. I believe, gentlemen, that if these documents are as important as the Prosecution said today, it is a *conditio sine qua non* that every defense counsel and every defendant should have a photostatic copy of these documents.

As we all know it is easy to produce a photostat in a few hours. With the excellent apparatus here available to the Pros-

ecution it should, in my opinion, be easy to produce 20 or 40 photostats of these 10 documents in 48 hours.

THE PRESIDENT: Well, you will meet the Counsel for the Prosecution tomorrow and attempt to come to some satisfactory arrangement with them then; and now the Tribunal will adjourn.

[The Tribunal adjourned until 26 November 1945 at 1000 hours.]

FIFTH DAY

Monday, 26 November 1945

Morning Session

DR. FRITZ SAUTER (Counsel for Defendant Von Ribbentrop): May it please the Court, I should like to make an application. I am Dr. Sauter, counsel for the Defendant Von Ribbentrop. On 30 October the Defendant Von Ribbentrop requested that his former secretary, Margareta Blank, at that time in the Remand Prison in Nuremberg, be placed at his disposal in order that he might dictate his reply to the Indictment, as well as a description of the manner in which he performed his official duties in the last 7 or 8 years.

On 11 November 1945 the Tribunal allowed this request. The Defendant Von Ribbentrop was therefore able to dictate for a few hours, but this was stopped for reasons unknown to him. Neither has the Defendant Von Ribbentrop had returned to him the shorthand notes or the typed transcript. He has not been able to dictate any more to Fräulein Blank.

On 15 November Ribbentrop repeated his request regarding the witness Blank, but up to the present she has not been placed again at his disposal. The Defendant Ribbentrop therefore requests the President to give instructions that his former secretary, Margareta Blank, again be placed at his disposal in order to take down the necessary notes from dictation. Such permission appears to be absolutely essential to enable the Defendant Ribbentrop properly to prepare his own testimony and the testimony of the defense witnesses.

Particularly in the case of Von Ribbentrop, the material to be treated is so voluminous, that no other way of treating it appears feasible to us. The Defendant Von Ribbentrop has a further request to make. He has repeatedly asked that some of his former colleagues, in particular Ambassador Gauss, Ambassador Von Rintelen, Minister Von Sonnleitner, Professor Fritz Berber, and Under State Secretary Henke, be brought to Nuremberg as witnesses, and that he be permitted to speak to these witnesses in the presence of his counsel. This request had in part been refused by the Court on 10 November. The remaining part has not yet been decided.

It is quite impossible for the Defendant Von Ribbentrop to give a clear and exhaustive account of the entire foreign policy for the last 7 or 8 years if nothing is placed at his disposal except a pencil

and a block of writing paper. Even the White Books of the Foreign Office, for which he has asked, could not be placed at his disposal. In view of the fact that the data concerning Germany's foreign policy during the last 7 or 8 years is so extensive, the Defendant Von Ribbentrop cannot possibly recall every single date, every event, every document, *et cetera,* unless his memory is refreshed by his being able to speak with his former colleagues.

Apart from this the Defendant Von Ribbentrop has been in the habit of taking a great many soporifics during the last 4 years, especially bromides, and his memory has suffered in consequence. It would not be very helpful to the investigation of historical truth in a field which interests not only this Court, but also, to an even greater extent, the outside world, if Von Ribbentrop during his examination, might have to state at every turn that he could no longer recollect these details.

Defendant Von Ribbentrop therefore applies to the Court and begs that his above-mentioned colleagues be brought here and that he receive permission to discuss with them matters pertaining to the Trial, in order that he may prepare for further proceedings.

THE PRESIDENT: The Tribunal has already intimated to defendant's counsel that all applications should, as far as practicable, be made in writing, and they consider that the applications which have now been made orally should have been made in writing. They will consider the facts with reference to the applications in respect of the Defendant Von Ribbentrop's secretary. The other applications as to witnesses and documents, which have been made in writing, have been considered, or will be considered by the Tribunal.

DR. SAUTER: Mr. President, may I say in this connection that the applications which I have today submitted have been repeatedly lodged with the Court in writing, but my client is anxious lest he experience difficulties in preparing for his own hearing and the hearing of the defense witnesses.

THE PRESIDENT: As was announced at the sitting on Friday, Counsel for the Prosecution were to try to arrange with defendants' counsel some satisfactory arrangement with reference to the production of documents in the German language. In accordance with that announcement, Counsel for the Prosecution saw Counsel for the Defense, and representatives of the Prosecution and the Defense appeared before the Tribunal and the Tribunal has provisionally made the following arrangement:

1. That in the future, only such parts of documents as are read in court by the Prosecution shall in the first instance be part of

the record. In that way those parts of the documents will be conveyed to defendants' counsel through the earphones in German.

2. In order that defendants and their counsel may have an opportunity of inspecting such documents in their entirety in German, a photostatic copy of the original and one copy thereof shall be deposited in the defendants' counsel room at the same time that they are produced in court.

3. The defendants' counsel may at any time refer to any other part of such documents.

4. Prosecuting counsel will furnish defendants' counsel with 10 copies of their trial briefs in English and five copies of their books of documents in English, at the time such briefs and books are furnished to the Tribunal.

5. Defendants' counsel will be furnished with one copy of each of the transcripts of the proceedings.

That is all. I call upon the prosecuting counsel for the United States.

MR. ALDERMAN: If it pleases the Tribunal, may I make, Mr. President, one inquiry with regard to your reference to trial briefs? On my section of the case I shall not expect to hand up trial briefs to the Court. Whatever I have in the nature of trial briefs will be put over the microphone. I wonder if that is satisfactory?

THE PRESIDENT: I think what I said meets that case.

MR. ALDERMAN: I thought so, yes.

THE PRESIDENT: Because what I said was that the defendants' counsel would be furnished with 10 copies of the trial briefs in English at the same time that they are furnished to the Tribunal. Therefore, if you don't furnish the trial briefs to the Tribunal, none will be furnished to the defendants' counsel.

MR. ALDERMAN: Yes. When the Tribunal rose on Friday last, I had just completed an introductory statement preliminary to the presentation of evidence on the aggressive war aspect of the case. In that introductory statement I had invited attention to the parts of the Charter and to the parts of the Indictment which are pertinent to this aspect of the case. I had also discussed the relationship between recorded history and the evidence to be presented, indicating what sort of additions to recorded history would be made by the evidence contained in the captured documents.

I then indicated to the Court that I would first proceed by presenting singly a handful of captured documents, which, in our opinion, prove the corpus of the crime of aggressive war, leaving no reasonable doubt concerning the aggressive character of the Nazi war, or concerning the conspiratorial premeditation of that war.

I indicated to the Tribunal that after proving the corpus of the crime in this way I would follow the presentation of this evidence with a more or less chronological presentation of the case on aggressive war, producing evidence in greater detail of the relevant activities of the conspirators from 1933 to 1941.

As the members of the Tribunal may understand, it is easier to make plans about presentation than to keep them. There have been, by necessity, some changes in our plans. I indicated on Friday that to a certain extent the American case under Count One and the British case under Count Two would interlock. The British Chief Prosecutor, Sir Hartley Shawcross, is by force of circumstances, required to be in London this week. He expects to be back next week. The intention now is that when he returns Monday he will make his opening statement covering Count Two of the Indictment and such interrelated parts of Count One of the Indictment as have not by then been presented. So that what is at the moment planned, if it meets with the Court's views, is that I shall continue, as far as I may within 2 days of this week, on the detailed story as to aggressive war; that thereupon we shall alter the presentation and present some other matters coming under Count One. Then, following the British Chief Prosecutor's opening statement on Monday of next week, we shall continue jointly with the chapters on Poland, Russia, and Japan, as parts of both Count One and Two. While that may not be strictly logical, it seems to us the best method with which to proceed under the circumstances.

I turn now to the period of 1933 to 1936, a period characterized by an orderly, planned sequence of preparations for war. This is the period covered by Paragraphs 1 and 2 of IV (F) of the Indictment. This may be found at Page 7 of the printed English text of the Indictment.

The essential character of this period was the formulation and execution of the plan to rearm and to reoccupy and fortify the Rhineland in violation of the Treaty of Versailles and other treaties, in order to acquire military strength and political bargaining power to be used against other nations.

Hitler's own eloquence in a secret speech delivered to all Supreme Commanders on 23 November 1939, at 1200 hours, is sufficient to characterize this phase of the Nazi conspiracy. This document comes to hand as a captured document found in the OKW files—OKW is Ober Kommando der Wehrmacht (the High Command of the Army, Chief of the High Command of the Armed Forces)—and was captured at Flensburg. The document is numbered 789-PS in our numbered series of documents.

I have in my hand, if the Court please, the German original of this document in the condition in which it was captured, and I wish to offer the document in evidence and have it given the proper serial number as the United States prosecutor's exhibit. The serial number, I understand, is United States Exhibit 23. I would ask that the German text of the original be handed to the German interpreters.

If the Court please, understanding the ruling just made by the presiding justice, although I have offered the entire document, as it is a very long speech, I shall not read into the record the entire speech. Of course the presiding judge said defense counsel may insert any other parts of it as they wish.

I shall begin reading at the beginning, and read a little more than half of the first page in the English text. I am advised that the German original is marked with a blue pencil at the point where I shall stop reading. I will read the English translation:

"November 23, 1939, 1200 hours. Conference with the Führer, to which all Supreme Commanders are ordered. The Führer gives the following speech:

"The purpose of this conference is to give you an idea of the world of my thoughts, which takes charge of me, in the face of future events, and to tell you my decisions. The building up of our Armed Forces was only possible in connection with the ideological"—the German word is "weltanschaulich"—"education of the German people by the Party."

If I may interpolate just to comment on that interesting German word "weltanschaulich", I take it that ideological is about as close a translation as we can get, but the word means more than that. It means a whole attitude towards the world, a way of looking on the world.

"When I started my political task"—I am quoting again—"in 1919, my strong belief in final success was based on a thorough observation of the events of the day and the study of the reasons for their occurrence. Therefore, I never lost my belief in the midst of setbacks which were not spared me during my period of struggle. Providence has had the last word and brought me success. Moreover, I had a clear recognition of the probable course of historical events and the firm will to make brutal decisions. The first decision was in 1919 when I, after long internal conflict, became a politician and took up the struggle against my enemies. That was the hardest of all decisions. I had, however, the firm belief that I would arrive at my goal. First of all, I

desired a new system of selection. I wanted to educate a minority which would take over the leadership. After 15 years I arrived at my goal, after strenuous struggles and many setbacks. When I came to power in 1933, a period of the most difficult struggle lay behind me. Everything existing before that had collapsed. I had to reorganize everything, beginning with the mass of the people and extending it to the Armed Forces. First, reorganization of the interior, abolishment of appearances of decay and defeatist ideas, education to heroism. While reorganizing the interior, I undertook the second task: To release Germany from its international ties. Two particular characteristics are to be pointed out: Secession from the League of Nations and denunciation of the Disarmament Conference. It was a hard decision. The number of prophets who predicted that it would lead to the occupation of the Rhineland was large, the number of believers was very small. I was supported by the nation, which stood firmly behind me, when I carried out my intentions. After that the order for rearmament. Here again there were numerous prophets who predicted misfortunes, and only a few believers. In 1935 the introduction of compulsory armed service. After that, militarization of the Rhineland, again a process believed to be impossible at that time. The number of people who put trust in me was very small. Then, beginning of the fortification of the whole country, especially in the west.

"One year later, Austria came."—I suppose he meant Austria went.—"This step also was considered doubtful. It brought about a considerable reinforcement of the Reich. The next step was Bohemia, Moravia, and Poland. This step also was not possible to accomplish in one campaign. First of all, the western fortification had to be finished. It was not possible to reach the goal in one effort. It was clear to me from the first moment that I could not be satisfied with the Sudeten-German territory. That was only a partial solution. The decision to march into Bohemia was made. Then followed the erection of the Protectorate, and with that the basis for the action against Poland was laid, but I wasn't quite clear at that time whether I should start first against the East and then in the West, or vice versa."

There are some curious antitheses of thought in that speech, as in most of Adolf Hitler's speeches. In one sentence he combines guidance by Providence with the making of brutal decisions. He constantly speaks of how very few people were with him, and

yet the mass of the German people were with him. But he does give a brief summary of the gist of what is contained in the allegations of the Indictment, to which I have invited your attention:

The organization of the mass of the people, then extending to the Armed Forces, and the various brutal decisions that he did make, about which history knows.

That long document contains other material of great interest. It may be that we shall advert to other portions of it later. At this point, however, I have simply asked the Court to focus attention on the matter I have just read and its bearing on the development of the conspiracy during the period 1933 to 1936.

Another captured document is sufficient to demonstrate the preparations for war in which the Nazi conspirators were engaged during this period. I refer to a top-secret letter dated 24 June 1935 from General Von Brauchitsch to the Supreme Commanders of the Army, Navy, and Air Forces. Attached to that letter is a copy of a secret Reich Defense Law of 21 May 1935 and a copy of a decision of the Reich Cabinet of 21 May 1935 on the Council for the Defense of the Reich.

These documents were captured in the OKW files at Fechenheim. This group of documents is numbered 2261-PS in our numbered series of documents. It seems to us one of the most significant evidences of secret and direct preparations for aggressive war.

I gave expression to a typographical error. That was General Von Blomberg instead of Brauchitsch.

I have the original of these documents. I ask that they be admitted into evidence as Exhibit USA-24.

The top page of that document, which I shall read in full, is the letter signed "Von Blomberg, Berlin, 21 June 1935, Top Secret"; headed "The Reich Minister of War and Supreme Commander of the Armed Forces, No. 1820/35 Top Secret L II a."

> "To: The Supreme Commander of the Army, the Supreme Commander of the Navy, the Supreme Commander of the Air Forces.
>
> "In the appendix I transmit one copy each of the law for the defense of the Reich of 21 May 1935, and of a decision of the Reich Cabinet of 21 May 1935 concerning the Reich Defense Council. The publication of the Reich Defense Law is temporarily suspended by order of the Führer and Reich Chancellor.
>
> "The Führer and Reich Chancellor has nominated the President of the Directorate of the Reichsbank, Dr. Schacht, to be 'Plenipotentiary-General for War Economy.'

"I request that the copies of the Reich Defense Law needed within the units of the Armed Forces, be ordered before 1 July 1935 at Armed Forces Office (L) where it is to be established with the request that the law should only be distributed down to corps headquarters outside of the Reich Ministry of War.

"I point out the necessity of strictest secrecy once more."

Signed by "Von Blomberg." Underneath that is an indorsement:

"Berlin, 3 September 1935; No. 1820/35 L Top Secret II a. To Defense-Economic Group G-3, copy transmitted (signed) Jodl."

There is attached thereto, if the Tribunal please, the statute referred to as the Reich Defense Law of 21 May 1935, or rather it was enacted by the Reich Cabinet, and it starts with the statement: "The Reich Cabinet has enacted the following law that is hereby made public."

There follows a law in detail covering preparations for state of defense, mobilization, appointment of this Plenipotentiary-General for War Economy, with plenipotentiary authority for the economic preparation of the war, and a Part III providing for setting of penalties.

The law is signed:

"The Führer and Reich Chancellor, Adolf Hitler; the Reich Minister of War, Von Blomberg; the Reich Minister of the Interior, Frick," one of the defendants. And at the bottom of it there is this note—that is on Sheet 4 of the original German, I think:

"Note on the Law for the Defense of the Reich of 21 May 1935. The publication of the Law for the Defense of the Reich of 21 May 1935 will be suspended. The law became effective 21 May 1935. The Führer and Reich Chancellor, Adolf Hitler."

So that although the law itself stated that it was made public, the publication was suspended by Adolf Hitler; although the law became immediately effective.

There is further attached a copy of the decision of the Reich Cabinet of 21 May 1935 on the council for the defense of the realm which deals largely with organization for economic preparation for the war and which I think was discussed by my colleague, Mr. Dodd, last week.

There can be no question that this law of May 21, 1935 was the cornerstone of war preparations of the Nazi conspirators. The relationship of the Defendant Schacht to this preparation is made transparently clear by this captured document.

So much, for the time being, on the preparatory phase of the conspiracy, 1933 to 1936.

As indicated earlier, the next phase of aggression was the formulation and execution of plans to attack Austria and Czechoslovakia, in that order.

This is the phase of the aggression covered by Paragraphs 3 (a), (b), and (c) of Section IV (F) of the Indictment, appearing at Pages 7 to 8 of the printed English text.

One of the most striking and revealing of all the captured documents which have come to hand is a document which we have come to know as the Hossbach notes of a conference in the Reich Chancellery on 5 November 1937 from 1615 to 2030 hours, in the course of which Hitler outlined to those present the possibilities and necessities of expanding their foreign policy, and requested—I quote: "That his statements be looked upon in the case of his death as his last will and testament." And so with this document we shall present to the Tribunal and to the public the last will and testament of Adolf Hitler as he contemplated that last will and testament on 5 November 1937. The document comes to hand through the United States Department of State and it is authenticated by the seal of the Secretary of State of the United States. It is Document Number 386-PS in our series of numbered documents. I offer it in evidence as Exhibit USA-25.

Before reading it, I note at the start that the recorder of the minutes of this meeting, then Colonel Hossbach, was the Führer's adjutant. I note also the presence at this conspiratorial meeting of the Defendant Erich Raeder. The Defendant Constantin von Neurath was present. The Defendant Hermann Wilhelm Göring was present. The minutes of this meeting reveal a crystalization towards the end of 1937 in the policy of the Nazi regime. Austria and Czechoslovakia were to be acquired by force. They would provide Lebensraum (living space) and improve Germany's military position for further operations. While it is true that actual events unfolded themselves in a somewhat different manner than that outlined at this meeting, in essence the purposes stated at the meeting were carried out. The document destroys any possible doubt concerning the Nazis' premeditation of their Crimes against Peace. This document is of such tremendous importance that I feel obliged to read it in full into the record:

"Berlin, 10 November 1937. Notes on the conference in the Reichskanzlei on 5 November 1937 from 1615 to 2030 hours.

"Present: The Führer and Reich Chancellor; the Reich Minister for War, Generalfeldmarschall Von Blomberg; the C-in-C Army, Generaloberst Freiherr Von Fritsch; the C-in-C Navy, Generaladmiral Dr. H. C. Raeder; the C-in-C Luftwaffe, Generaloberst Göring; the Reichsminister for Foreign

Affairs, Freiherr Von Neurath; Oberst Hossbach" (the adjutant who took the minutes).

"The Führer stated initially that the subject matter of today's conference was of such high importance that its detailed discussion would certainly in other states take place before the Cabinet in full session. However, he, the Führer, had decided not to discuss this matter in the larger circle of the Reich Cabinet, because of its importance. His subsequent statements were the result of detailed deliberations and of the experiences of his 4½ years in government; he desired to explain to those present his fundamental ideas on the possibilities and necessities of expanding our foreign policy, and in the interests of a far-sighted policy he requested that his statements be looked upon, in the case of his death, as his last will and testament.

"The Führer then stated: The aim of German policy is the security and the preservation of the nation and its propagation. This is consequently a problem of space. The German nation comprises 85 million people, which, because of the number of individuals and the compactness of habitation, form a homogeneous European racial body, the like of which cannot be found in any other country. On the other hand it justifies the demand for larger living space more than for any other nation. If there have been no political consequences to meet the demands of this racial body for living space, then that is the result of historical development spread over several centuries and should this political condition continue to exist, it will represent the greatest danger to the preservation of the German nation"—The German word used there, is not "nation"; it is "Volkstum"—"at its present high level. An arrest of the decrease of the German element in Austria and in Czechoslovakia is just as little possible as the preservation of the present state in Germany itself."

I interpolate that I can but think that this is not a good translation of the German because to me the sentence seems meaningless.

"Instead of growth, sterility will be introduced, and as a consequence, tensions of a social nature will appear after a number of years, because political and philosophical ideas are of a permanent nature only as long as they are able to produce the basis for the realization of the actual claim of the existence of a nation. The German future is therefore dependent exclusively on the solution of the need for living space. Such a solution can be sought naturally only for a limited period, about one to three generations.

"Before touching upon the question of solving the need for living space, it must be decided whether a solution of the German position with a good future can be attained, either by way of an autarchy or by way of an increased share in universal commerce and industry.

"Autarchy: Execution will be possible only with strict National Socialist State policy, which is the basis"—that is the basis of autarchy—"Assuming this can be achieved the results are as follows:

"A. In the sphere of raw materials, only limited, but not total autarchy can be attained:

"1. Wherever coal can be used for the extraction of raw materials, autarchy is feasible.

"2. In the case of ores the position is much more difficult. Requirements in iron and light metals can be covered by ourselves. Copper and tin, however, cannot.

"3. Cellular materials can be covered by ourselves as long as sufficient wood supplies exist. A permanent solution is not possible.

"4. Edible fats—possible.

"B. In the case of foods, the question of an autarchy must be answered with a definite capital NO.

"The general increase of living standards, compared with 30 to 40 years ago, brought about a simultaneous increase of the demand and an increase of personal consumption among the producers, the farmers themselves. The proceeds from the production increase in agriculture have been used for covering the increased demand, therefore they represent no actual increase in production. A further increase in production by making greater demands on the soil is not possible because it already shows signs of deterioration due to the use of artificial fertilizers, and it is therefore certain that, even with the greatest possible increase in production, participation in the world market could not be avoided."

I interpolate, that if I understand him he means by that, "no autarchy; we must participate in world trade and commerce."

"The considerable expenditure of foreign currency to secure food by import, even in periods when harvests are good, increases catastrophically when the harvest is really poor. The possibility of this catastrophe increases correspondingly to the increase in population, and the annual 560,000 excess in births would bring about an increased consumption in bread, because the child is a greater bread eater than the adult.

"Permanently to counter the difficulties of food supplies by lowering the standard of living and by rationalization is impossible in a continent which has developed an approximately equivalent standard of living. As the solving of the unemployment problem has brought into effect the complete power of consumption, some small corrections in our agricultural home production will be possible, but not a wholesale alteration of the standard of food consumption. Consequently autarchy becomes impossible, specifically in the sphere of food supplies, as well as generally.

"Participation in world economy: There are limits to this which we are unable to transgress. The market fluctuation would be an obstacle to a secure foundation of the German position; international commercial agreements do not offer any guarantee for practical execution. It must be considered on principle that since the World War (1914-18) an industrialization has taken place in countries which formerly exported food. We live in a period of economic empires, in which the tendency to colonies, again approaches the condition which originally motivated colonization; in Japan and Italy economic motives are the basis of their will to expand, and economic need will also drive Germany to it. Countries outside the great economic empires have special difficulties in expanding economically.

"The upward tendency, which has been caused in world economy, due to armament competition, can never form a permanent basis for an economic settlement, and this latter is also hampered by the economic disruption caused by Bolshevism. There is a pronounced military weakness in those states which base their existence on export. As our exports and imports are carried out over those sea lanes which are dominated by Britain, it is more a question of security of transport rather than one of foreign currency and this explains the great weakness of our food situation in wartime. The only way out, and one which may appear imaginary, is the securing of greater living space, an endeavor which at all times has been the cause of the formation of states and of movements of nations. It is explicable that this tendency finds no interest in Geneva and in satisfied states. Should the security of our food situation be our foremost thought, then the space required for this can only be sought in Europe, but we will not copy liberal capitalistic policies which rely on exploiting colonies. It is not a case of conquering people, but of conquering agriculturally useful space. It would also be more

to the purpose to seek raw material-producing territory in Europe directly adjoining the Reich and not overseas, and this solution would have to be brought into effect for one or two generations. What would be required at a later date over and above this must be left to subsequent generations. The development of great world-wide national bodies is naturally a slow process and the German people, with its strong racial root"—I interpolate, there is that German word "Rassekern" again (the racial root)—"has for this purpose the most favorable foundations in the heart of the European continent. The history of all times—Roman Empire, British Empire—has proved that every space expansion can only be effected by breaking resistance and taking risks. Even setbacks are unavoidable; neither formerly nor today has space been found without an owner; the attacker always comes up against the proprietor."

[A recess was taken.]

MR. ALDERMAN: May it please the Tribunal, after the somewhat jumbled discussion which I have just read of geopolitical economic theory and of the need for expansion and Lebensraum, Adolf Hitler, in these Hossbach notes, posed this question—and I quote:

"The question for Germany is where the greatest possible conquest could be made at lowest cost.

"German politics must reckon with its two hateful enemies, England and France, to whom a strong German colossus in the center of Europe would be intolerable. Both these states would oppose a further reinforcement of Germany, both in Europe and overseas, and in this opposition they would have the support of all parties. Both countries would view the building of German military strong points overseas as a threat to their overseas communications, as a security measure for German commerce, and retroactively a strengthening of the German position in Europe.

"England is not in a position to cede any of her colonial possessions to us, owing to the resistance which she experiences in the Dominions. After the loss of prestige which England has suffered owing to the transfer of Abyssinia to Italian ownership, a return of East Africa can no longer be expected. Any resistance on England's part would at best consist in the readiness to satisfy our colonial claims by taking away colonies which at the present moment are not in

British hands, for example, Angola. French favors would probably be of the same nature.

"A serious discussion regarding the return of colonies to us could be considered only at a time when England is in a state of emergency and the German Reich is strong and well armed. The Führer does not share the opinion that the Empire is unshakeable."—Meaning, I take it, the British Empire.—

"Resistance against the Empire is to be found less in conquered territories than amongst its competitors. The British Empire and the Roman Empire cannot be compared with one another in regard to durability; after the Punic Wars the latter did not have a serious political enemy. Only the dissolving effects which originated in Christendom, and the signs of age which creep into all states, made it possible for the ancient Germans to subjugate ancient Rome.

"Alongside the British Empire today a number of states exist which are stronger than it. The British mother country is able to defend its colonial possession only allied with other states and not by its own power. How could England alone, for example, defend Canada against attack by America, or its Far Eastern interests against an attack by Japan?

"The singling out of the British Crown as the bearer of Empire unity is in itself an admission that the universal empire cannot be maintained permanently by power politics. The following are significant pointers in this respect:

"(a) Ireland's struggle for independence.

"(b) Constitutional disputes in India where England, by her half measures, left the door open for Indians, at a later date, to utilize the non-fulfilment of constitutional promises as a weapon against Britain.

"(c) The weakening of the British position in the Far East by Japan.

"(d) The opposition in the Mediterranean to Italy which —by virtue of its history, driven by necessity and led by a genius—expands its power position and must consequently infringe British interests to an increasing extent. The outcome of the Abyssinian war is a loss of prestige for Britain which Italy is endeavoring to increase by stirring up discontent in the Mohammedan world.

"It must be established in conclusion that the Empire cannot be held permanently by power politics by 45 million Britons, in spite of all the solidity of their ideals. The proportion of the populations in the Empire, compared with that of

the motherland, is nine to one, and it should act as a warning to us that if we expand in space, we must not allow the level of our population to become too low."

I take it he meant by that: "Keep the population of occupied territories low in comparison with ours."

"France's position is more favorable than that of England. The French Empire is better placed geographically; the population of its colonial possessions represents a potential military increase. But France is faced with difficulties of internal politics. In the life of the nations, parliamentary governments ruled only 10 per cent of the time, approximately; whereas, totalitarian governments ruled 90 per cent of the time. Nevertheless, we have to take the following into our political consideration as power factors:

"Britain, France, Russia, and the adjoining smaller states.

"The German question can be solved only by way of force, and this is never without risk. The battles of Frederick the Great for Silesia, and Bismarck's wars against Austria and France had been a tremendous risk and the speed of Prussian action in 1870 had prevented Austria from participating in the war. If we place the decision to apply force with risk at the head of the following expositions, then we are left to reply to the questions 'when' and 'how'. In this regard we have to decide upon three different cases."

I interpolate: The Tribunal will recall the specific allegation in the Indictment that at this meeting there emerged three different plans, any of which might be utilized.

"Case 1. Period 1943-45: After this we can only expect a change for the worse. The rearming of the Army, the Navy, and the Air Force, as well as the formation of the Officers' Corps, are practically concluded."

I remind the Tribunal that this meeting was on 5 November 1937, but he is contemplating the period 1943-45.

"Our material equipment and armaments are modern; with further delay the danger of their becoming out-of-date will increase. In particular, the secrecy of 'special weapons' cannot always be safeguarded. Enlistment of reserves would be limited to the current recruiting age groups and an addition from older untrained groups would be no longer available.

"In comparison with the rearmament, which will have been carried out at that time by other nations, we shall decrease in relative power. Should we not act until 1943-45, then, dependent on the absence of reserves, any year could bring

about the food crisis, for the countering of which we do not possess the necessary foreign currency. This must be considered a point of weakness in the regime. Over and above that, the world will anticipate our action and will increase counter-measures yearly. Whilst other nations isolate themselves, we should be forced on the offensive.

"What the actual position would be in the years 1943-45, no one knows today. It is certain, however, that we can wait no longer.

"On the one side the large armed forces, with the necessity for securing their upkeep, the aging of the Nazi movement and of its leaders, and on the other side the prospect of a lowering of the standard of living and a drop in the birth rate, leaves us no other choice but to act. If the Führer is still living, then it will be his irrevocable decision to solve the German space problem no later than 1943-45. The necessity for action before 1943-45 will come under consideration in cases 2 and 3.

"Case 2. Should the social tensions in France lead to an internal political crisis of such dimensions that it absorbs the French Army and thus renders it incapable for employment in war against Germany, then the time for action against Czechoslovakia has come.

"Case 3. It would be equally possible to act against Czechoslovakia if France should be so tied up by a war against another state that it cannot proceed against Germany.

"For the improvement of our military political position it must be our first aim, in every case of entanglement by war, to conquer Czechoslovakia and Austria, simultaneously, in order to remove any threat from the flanks in case of a possible advance westwards. In the case of a conflict with France it would hardly be necessary to assume that Czechoslovakia would declare war on the same day as France. However, Czechoslovakia's desire to participate in the war will increase proportionally to the degree to which we are being weakened. Its actual participation could make itself felt by an attack on Silesia, either towards the north or the west.

"Once Czechoslovakia is conquered—and a mutual frontier, Germany-Hungary is obtained—then a neutral attitude by Poland in a German-French conflict could more easily be relied upon. Our agreements with Poland remain valid only as long as Germany's strength remains unshakable; should Germany have any setbacks, then an attack by Poland against

East Prussia, perhaps also against Pomerania, and Silesia, must be taken into account.

"Assuming a development of the situation, which would lead to a planned attack on our part in the years 1943-45, then the behavior of France, England, Poland, and Russia would probably have to be judged in the following manner:

"The Führer believes personally, that in all probability England and perhaps also France, have already silently written off Czechoslovakia, and that they have got used to the idea that this question would one day be cleaned up by Germany. The difficulties in the British Empire and the prospect of being entangled in another long, drawn-out European war, would be decisive factors in the non-participation of England in a war against Germany. The British attitude would certainly not remain without influence on France's attitude. An attack by France, without British support, is hardly probable, assuming that its offensive would stagnate along our western fortifications. Without England's support it would also not be necessary to take into consideration a march by France through Belgium and Holland, and this would also not have to be reckoned with by us in case of a conflict with France, as in every case it would have, as a consequence, the enmity of Great Britain. Naturally, we should in every case have to bar our frontier during the operation of our attacks against Czechoslovakia and Austria. It must be taken into consideration here that Czechoslovakia's defense measures will increase in strength from year to year and that a consolidation of the inside values of the Austrian Army will also be effected in the course of years. Although the population of Czechoslovakia in the first place is not a thin one, the embodiment of Czechoslovakia and Austria would nevertheless constitute the conquest of food for 5 to 6 million people, on the basis that a compulsory emigration of 2 million from Czechoslovakia, and of 1 million from Austria could be carried out. The annexation of the two States to Germany, militarily and politically, would constitute a considerable relief, owing to shorter and better frontiers, the freeing of fighting personnel for other purposes, and the possibility of reconstituting new armies up to a strength of about 12 divisions, representing a new division per 1 million population.

"No opposition to the removal of Czechoslovakia is expected on the part of Italy; however, it cannot be judged today what would be her attitude in the Austrian question, since it would

depend largely on whether the Duce were alive at the time or not.

"The measure and speed of our action would decide Poland's attitude. Poland will have little inclination to enter the war against a victorious Germany, with Russia in the rear.

"Military participation by Russia must be countered by the speed of our operations; it is a question whether this needs to be taken into consideration at all, in view of Japan's attitude.

"Should case 2 occur—paralyzation of France by a civil war—then the situation should be utilized at any time for operations against Czechoslovakia, as Germany's most dangerous enemy would be eliminated.

"The Führer sees case 3 looming nearer; it could develop from the existing tensions in the Mediterranean, and should it occur, he has firmly decided to make use of it any time, perhaps even as early as 1938.

"Following recent experiences in the course of the events of the war in Spain, the Führer does not see an early end to hostilities there.

"Taking into consideration the time required for past offensives by Franco,"—the English text says "France"; it means "Franco"—"a further 3 years' duration of war is within the bounds of possibility. On the other hand, from the German point of view, a 100 per cent victory by Franco is not desirable; we are more interested in a continuation of the war and preservation of the tensions in the Mediterranean. Should Franco be in sole possession of the Spanish peninsula, it would mean the end of Italian intervention and of the presence of Italy in the Balearic Isles. As our interests are directed towards continuing the war in Spain, it must be the task of our future policy to strengthen Italy in her fight to hold on to the Balearic Isles. However, a solidification of Italian positions in the Balearic Isles cannot be tolerated either by France or by England and could lead to a war by France and England against Italy, in which case Spain, if entirely in White (that is, Franco's) hands, could participate on the side of Italy's enemies. A subjugation of Italy in such a war appears very unlikely. Additional raw materials could be brought to Italy via Germany. The Führer believes that Italy's military strategy would be to remain on the defensive against France on the western frontier and carry out operations against France from Libya, against the North African French colonial possessions.

"As a landing of French and British troops on the Italian coast can be discounted, and as a French offensive via the Alps to upper Italy would be extremely difficult, and would probably stagnate before the strong Italian fortifications, French lines of communication by the Italian fleet will, to a great extent, paralyze the transport of fighting personnel from North Africa to France, so that at its frontiers with Italy and Germany, France will have at its disposal solely the metropolitan fighting forces."

There again I think that must be a defective English translation. "French lines of communication by the Italian fleet," must mean "fresh lines," or something in that connection.

"If Germany profits from this war by disposing of the Czechoslovakian and the Austrian questions, the probability must be assumed that England, being at war with Italy, would not decide to commence operations against Germany. Without British support, a warlike action by France against Germany is not to be anticipated.

"The date of our attack on Czechoslovakia and Austria must be made depending upon the course of the Italian-French-English war and would not be simultaneous with the commencement of military operations by these three States. The Führer was also not thinking of military agreements with Italy, but in complete independence and by exploiting this unique favorable opportunity, he wishes to begin to carry out operations against Czechoslovakia. The attack on Czechoslovakia would have to take place with the speed of lightning." —The German words are "blitzartig schnell."

"Feldmarschall Von Blomberg and Generaloberst Von Fritsch, in giving their estimate on the situation, repeatedly pointed out that we should not run the risk that England and France become our enemies:

"They stated that the war with Italy would not bind the French Army to such an extent that it would not be in a position to commence operations on our western frontier with superior forces. Generaloberst Von Fritsch estimated the French forces which would presumably be employed on the Alpine frontier against Italy to be in the region of 20 divisions, so that a strong French superiority would still remain on our western frontier. The French would, according to German reasoning, attempt to advance into the Rhineland. We should consider the lead which France has in mobilization and, quite apart from the very small value of our then-existing fortifications, which was pointed out particularly by

General Feldmarschall Von Blomberg; the four motorized divisions which had been laid down for the West would be more or less incapable of movement.

"With regard to our offensive in a southeasterly direction, Feldmarschall Von Blomberg drew special attention to the strength of the Czechoslovakian fortifications, the building of which had assumed the character of a Maginot Line and which would present extreme difficulties to our attack.

"Generaloberst Von Fritsch mentioned that it was the purpose of a study which he had laid on for this winter to investigate the possibilities of carrying out operations against Czechoslovakia, with special consideration of the conquest of the Czechoslovakian system of fortifications; the Generaloberst also stated that, owing to the prevailing conditions, he would have to relinquish his leave abroad, which was to begin on 10 November. This intention was countermanded by the Führer, who gave as a reason that the possibility of the conflict was not to be regarded as being so imminent. In reply to statements by General Feldmarschall Von Blomberg and Generaloberst Von Fritsch regarding England and France's attitude, the Führer repeated his previous statements and said that he was convinced of Britain's non-participation and that consequently he did not believe in military action by France against Germany. Should the Mediterranean conflict, already mentioned, lead to a general mobilization in Europe, then we should have to commence operations against Czechoslovakia immediately. If, however, the powers who are not participating in the war should declare their disinterestedness, then Germany would, for the time being, have to side with this attitude.

"In view of the information given by the Führer, Generaloberst Göring considered it imperative to think of a reduction of our military undertaking in Spain. The Führer agreed to this, insofar as he believed this decision should be postponed for a suitable date.

"The second part of the discussion concerned material armament questions. (Signed) Hossbach."—There are other notations.

In this connection I invite the Court's attention to the allegation in Paragraph 3 (a) of Section IV (F) of the Indictment; Page 7 of the printed English text, relating to a meeting of an influential group of Nazi conspirators on 5 November 1937. The document just introduced and read in evidence gives the specific evidentiary support for that allegation.

The record of what happened thereafter is well known to history. The Anschluss with Austria, under military pressure from the Nazis, occurred in March 1938. We shall give you detailed evidence concerning that in due course. So will we as to details of the aggression against Czechoslovakia, including the pressure on Czechoslovakia that resulted in the Munich Pact of September 1938, and the violation of that Pact itself by Germany, on 15 March 1939. There is much of interest in the secret documents relating to those aggressions.

At this point, however, I desire to bring to the attention of the Tribunal one more captured document, which reveals in all its nakedness the truth concerning the deliberateness of the aggression against Czechoslovakia. This document consists of a file, a file kept by Colonel Schmundt, Hitler's adjutant. The file was found by one of the units of the 327th Glider Infantry, in a cellar of the Platterhof, Obersalzberg, near Berchtesgaden. The file represents a work-file of originals and duplicates, incidental to the preparations for the annexation of Czechoslovakia. I should like to ask the Tribunal to examine particularly the photostat of the original German of this file. We have copies of those photostats. Something in physical form is lost in transcribing a translation. The picture of the original file, including photographs of the telegrams, gives a sense of the reality of the evidence that is lost in the transcribed translation. The file is Document Number 388-PS, in our numbered series of documents. I have here the original file, as found.

I thought perhape I might read the German title. It is "Chefsache Fall Grün," that is the main plan for "Case Green," "Green" being a code word for the aggression against Czechoslovakia.

I offer the entire file in evidence as Exhibit USA-26 and will ask that photostats be passed to the Court. I offer the file, if the Tribunal please, with, of course, the understanding and realization that only such parts of it as I read will immediately go into evidence; but we shall refer to other parts from time to time later, in the presentation of the case. The material in this file will be dealt with in greater detail at a later point in my presentation. However, at this point, I desire to call attention to item number 2 in the file.

Item number 2 is dated 22 April 1938. It is the second sheet of the English translation. It is a summary, prepared by Schmundt, the adjutant, of a discussion on 21 April 1938 between Hitler and the Defendant Wilhelm Keitel. This item, like the other items in the file, relates to Fall Grün, or Case Green. As I said, Case Green was a secret code word for the planned operations against Czechoslovakia. This meeting occurred within approximately 1 month

following the successful annexation of Austria. In the carrying out of the conspiracy, it became necessary to revise the Plan Grün to take into account the changed attitude, as a result of the bloodless success against Austria. I shall now read item number 2 of this file:

"Berlin, 22 April 1938. Bases of the Dissertation on 'Grün.'

"Summary of discussion between Führer and General Keitel of 21 April:

"A. Political aspect.

"1. Strategic surprise attack, out of a clear sky without any cause or possibility of justification, has been turned down. As result would be: hostile world opinion which can lead to a critical situation. Such a measure is justified only for the elimination of the last opponent on the mainland.

"2. Action after a time of diplomatic clashes, which gradually come to a crisis and lead to war.

"3. Lightning-swift action as the result of an incident (for example, the assassination of German Ambassador in connection with an anti-German demonstration.)

"B. Military conclusions.

"1. The preparations are to be made for the political possibilities (2 and 3). Case 2 is the undesired one since Grün will have taken security measures.

"2. The loss of time caused by transporting the bulk of the divisions by rail—which is unavoidable, but should be cut down as far as possible—must not impede a lightning-swift blow at the time of the action.

"3. 'Separate thrusts' are to be carried out immediately with a view to penetrating the enemy fortification lines at numerous points and in a strategically favorable direction. The thrusts are to be worked out to the smallest detail (knowledge of roads, of targets, composition of the columns according to their individual tasks). Simultaneous attacks by the Army and Air Force.

"The Air Force is to support the individual columns (for example dive-bombers; sealing of installations at penetration points, hampering the bringing up of reserves, destroying signal communications traffic, thereby isolating the garrisons).

"4. Politically, the first 4 days of military action are the decisive ones. If there are no effective military successes, a European crisis will certainly arise. Accomplished facts must prove the senselessness of foreign military intervention, draw

Allies into the scheme (division of spoils) and demoralize 'Grün.'

"Therefore: bridging the time gap between first penetration and employment of the forces to be brought up, by a determined and ruthless thrust by a motorized army (for example via Pilsen, Prague).

"5. If possible, separation of transport movement 'Rot' from 'Grün'."

'Rot' was the code name for their then plan against the West.

"A simultaneous strategic concentration 'Rot' can lead 'Rot' to undesired measures. On the other hand, it must be possible to put 'Fall Rot' (Case Red) into operation at any time.

"C. Propaganda.

"1. Leaflets on the conduct of Germans in Czechoslovakia (Grünland).

"2. Leaflets with threats for intimidation of the Czechs (Grünen)."

This is initialled by Schmundt.

In the reading of this document, the Tribunal doubtless noted particularly Paragraph 3, under the heading "Political Aspect," which reads as follows: "Lightning-swift action as the result of an incident (example: Assassination of German Ambassador as an upshot of an anti-German demonstration)." The document as a whole, establishes that the conspirators were planning the creation of an incident to justify to the world their own aggression against Czechoslovakia. It establishes, I submit, that consideration was being given to assassinating the German Ambassador at Prague to create the requisite incident. This is alleged in Paragraph 3 (c) of Section IV (F) of the Indictment, appearing at Page 8 of the printed English text.

As the Indictment was being read, at the opening of the case, when this particular allegation was reached, the Defendant Göring shook his head slowly and solemnly in the negative. I can well understand that he would have shaken his head, if he believed the allegation of the Indictments to be untrue. In the course of Mr. Justice Jackson's opening address, when this same matter was referred to, the Defendant Göring again solemnly shook his head. On this allegation the Prosecution stands on the evidence just submitted, the denials of the Defendant Göring, notwithstanding.

If the Court please, would this be a convenient time to recess?

THE PRESIDENT: The Tribunal will adjourn now until 2 o'clock.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

THE PRESIDENT: Mr. Alderman.

MR. ALDERMAN: May it please the Tribunal, as I suggested earlier, the next phase of the aggression was the formulation and execution of the plan to attack Poland and with it the resulting initiation of aggressive war in Poland in September 1939. This is covered by Paragraphs 4 (a) and (b) of Section IV (F) of the Indictment appearing on Page 9 of the printed English text.

Here again the careful and meticulous record-keeping of the Adjutant Schmundt has provided us with a document in his own handwriting, which lets the cat out of the bag. That may be a troublesome colloquialism to translate. I do not know. The document consists of minutes of a conference held on 23 May 1939. The place of the conference was the Führer's study in the New Reich Chancellery. The Defendant Göring was present.

[The Defendant Frick interrupted at this point and said: "This year is surely not correct." This statement in German was not translated.]

MR. ALDERMAN: I think one of the defendants indicated I had referred to the wrong year. My notes show 23 May 1939. That is shown by the original document.

THE PRESIDENT: Which is the document to which you are referring?

MR. ALDERMAN: That is Document L-79. As I said, the Defendant Göring was present. The Defendant Raeder was present. The Defendant Keitel was present. The subject of the meeting was, I quote: "Indoctrination on the Political Situation and Future Aims." This document is of historical importance, second not even to the political will and testament of the Führer, recorded by Adjutant Hossbach.

The original of this document when captured, found its way through the complicated channels across the Atlantic to the United States. There, it was found by members of the staff of the American Prosecution, by them taken to London, and thence to Nuremberg. The "L" on the identifying number indicates that it is one of the documents which was assembled in London and brought here from there. We think the document is of unquestioned validity. Its authenticity and its accuracy, as a record of what transpired at the meeting of 23 May 1939, stands admitted by the Defendant Keitel in one of his interrogations. As I say, the number is Document L-79 in our numbered series. I offer it in evidence as Exhibit USA-27.

This document also is of such great importance historically and as bearing on the issues now presented to the Tribunal, that I feel obliged to read most of it. At the top:

"Top Secret (Geheime Reichssache). To be transmitted by officer only.

"Minutes of a conference on 23 May 1939. Place: The Führer's study, New Reich Chancellery. Adjutant on duty: Lieutenant Colonel (G. S.) Schmundt.

"Present: The Führer, Field Marshal Göring, Grand Admiral Raeder, Colonel General Von Brauchitsch, Colonel General Keitel, Colonel General Milch, General (of Artillery) Halder, General Bodenschatz, Rear Admiral Schniewindt, Colonel (G. S.) Jeschonnek, Colonel (G. S.) Warlimont, Lieutenant Colonel (G. S.) Schmundt, Captain Engel (Army), Lieutenant Commander Albrecht, Captain V. Below (Army).

"Subject: Indoctrination on the Political Situation and Future Aims.

"The Führer defined as the purpose of the conference:

"1. Analysis of the situation;

"2. Definition of the tasks for the Armed Forces arising from that situation;

"3. Exposition of the consequences of those tasks;

"4. Ensuring the secrecy of all decisions and work resulting from those consequences. Secrecy is the first essential for success.

"The Führer's observations are given in accordance with their meaning. Our present situation must be considered from two points of view: 1) The actual development of events between 1933 and 1939; 2) the permanent and unchanging situation in which Germany lies.

"In the period 1933-39, progress was made in all fields. Our military situation improved enormously.

"Our situation with regard to the rest of the world has remained the same.

"Germany had dropped from the circle of Great Powers. The balance of power had been effected without the participation of Germany.

"This equilibrium is disturbed when Germany's demands for the necessities of life make themselves felt, and Germany re-emerges as a Great Power. All demands are regarded as 'encroachments'. The English are more afraid of dangers in the economic sphere than of the simple threat of force.

"A mass of 80 million people has solved the problems of ideals. So, too, must the economic problems be solved. No German can evade the creation of the necessary economic conditions for this. The solution of the problems demands courage. The principle by which one evades solving the problem by adapting oneself to circumstances is inadmissible. Circumstances must rather be adapted to aims. This is impossible without invasion of foreign states or attacks upon foreign property.

"Living space, in proportion to the magnitude of the state, is the basis of all power. One may refuse for a time to face the problem, but finally it is solved one way or the other. The choice is between advancement or decline. In 15 or 20 years' time we shall be compelled to find a solution. No German statesman can evade the question longer than that.

"We are at present in a state of patriotic fervor, which is shared by two other nations: Italy and Japan.

"The period which lies behind us has indeed been put to good use. All measures have been taken in the correct sequence and in harmony with our aims.

"After 6 years, the situation is today as follows:

"The national political unity of the Germans has been achieved, apart from minor exceptions."—I suppose they were those in the concentration camps.—"Further successes cannot be attained without the shedding of blood.

"The demarcation of frontiers is of military importance.

"The Pole is no 'supplementary enemy'. Poland will always be on the side of our adversaries. In spite of treaties of friendship, Poland has always had the secret intention of exploiting every opportunity to do us harm.

"Danzig is not the subject of the dispute at all. It is a question of expanding our living space in the East and of securing our food supplies, of the settlement of the Baltic problem. Food supplies can be expected only from thinly populated areas. Over and above the natural fertility, thoroughgoing German exploitation will enormously increase the surplus.

"There is no other possibility for Europe.

"Colonies: Beware of gifts of colonial territory. This does not solve the food problem. Remember: blockade.

"If fate brings us into conflict with the West, the possession of extensive areas in the East will be advantageous. We shall be able to rely upon record harvests even less in time of war than in peace.

"The population of non-German areas will perform no military service, and will be available as a source of labor.

"The Polish problem is inseparable from conflict with the West.

"Poland's internal power of resistance to Bolshevism is doubtful. Thus Poland is of doubtful value as a barrier against Russia.

"It is questionable whether military success in the West can be achieved by a quick decision; questionable too is the attitude of Poland.

The Polish Government will not resist pressure from Russia. Poland sees danger in a German victory in the West, and will attempt to rob us of the victory.

"There is therefore no question of sparing Poland, and we are left with the decision: *To attack Poland at the first suitable opportunity*".—That, if the Court please, is underscored in the original German text.—

"We cannot expect a repetition of the Czech affair. There will be fighting. Our task is to isolate Poland. The success of the isolation will be decisive.

"Therefore, the Führer must reserve the right to give the final order to attack. There must be no simultaneous conflict with the Western Powers (France and England).

"If it is not certain that a German-Polish conflict will not lead to war in the West, then the fight must be primarily against England and France.

"Fundamentally, therefore: Conflict with Poland, beginning with an attack on Poland, will only be successful if the Western Powers keep out of it. If this is impossible, then it will be better to attack in the West and to settle Poland at the same time.

"The isolation of Poland is a matter of skillful politics.

"Japan is a weighty problem. Even if at first, for various reasons, her collaboration with us appears to be somewhat cool and restricted, it is nevertheless in Japan's own interest to take the initiative in attacking Russia in good time.

"Economic relations with Russia are possible only if political relations have improved. A cautious trend is apparent in press comment. It is not impossible that Russia will show herself to be disinterested in the destruction of Poland. Should Russia take steps to oppose us, our relations with Japan may become closer.

"If there were an alliance of France, England, and Russia against Germany, Italy, and Japan, I would be constrained to attack England and France with a few annihilating blows. The Führer doubts the possibility of a peaceful settlement with England. We must prepare ourselves for the conflict. England sees in our development the foundation of a hegemony which would weaken England. England is therefore our enemy, and the conflict with England will be a life-and-death struggle.

"What will this struggle be like?"—Underscored in the German original.—

"England cannot deal with Germany and subjugate us with a few powerful blows. It is imperative for England that the war should be brought as near to the Ruhr Basin as possible. French blood will not be spared (West Wall). The possession of the Ruhr Basin will determine the duration of our resistance.

"The Dutch and Belgian air bases must be occupied by armed forces. Declarations of neutrality cannot be relied upon. If England and France intend the war between Germany and Poland to lead to a conflict, they will support Holland and Belgium in their neutrality and make them build fortifications in order finally to force them into cooperation.

"Albeit under protest, Belgium and Holland will yield to pressure.

"Therefore, if England intends to intervene in the Polish war, we must occupy Holland with lightning speed. We must aim at securing a new defense line on Dutch soil up to the Zuider Zee.

"The war with England and France will be a life-and-death struggle.

"The idea that we can get off cheaply is dangerous; there is no such possibility. We must burn our boats, and it is no longer a question of justice or injustice, but of life or death for 80 million human beings.

"Question: Short or long war?

"Every country's armed forces or government must aim at a short war. The government, however, must also be prepared for a war of 10 to 15 years' duration.

"History has always shown that people have believed that wars would be short. In 1914 the opinion still prevailed that it was impossible to finance a long war. Even today this idea still persists in many minds. But on the contrary, every

state will hold out as long as possible, unless it immediately suffers some grave weakening (for example Ruhr Basin). England has similar weaknesses.

"England knows that to lose a war will mean the end of her world power.

"England is the driving force against Germany."—which translated literally means: "England is the motor driving against Germany." I suppose that is the French "force motrice."

"Her strength lies in the following:

"1. The British themselves are proud, courageous, tenacious, firm in resistance, and gifted as organizers. They know how to exploit every new development. They have the love of adventure and the bravery of the Nordic race. Quality is lowered by dispersal. The German average is higher.

"2. World power in itself. It has been constant for 300 years. Extended by the acquisition of allies, this power is not merely something concrete, but must also be considered as a psychological force embracing the entire world. Add to this immeasurable wealth, with consequential financial credit.

"3. Geopolitical safety and protection by strong sea power and a courageous air force.

"England's weakness:

"If in the World War I we had had two battleships and two cruisers more, and if the battle of Jutland had been begun in the morning, the British Fleet would have been defeated and England brought to her knees. It would have meant the end of this war."—that war, I take it—"It was formerly not sufficient to defeat the Fleet. Landings had to be made in order to defeat England. England could provide her own food supplies. Today that is no longer possible.

"The moment England's food supply routes are cut, she is forced to capitulate. The import of food and oil depends on the Fleet's protection.

"If the German Air Force attacks English territory, England will not be forced to capitulate in one day. But if the Fleet is destroyed, immediate capitulation will be the result.

"There is no doubt that a surprise attack can lead to a quick decision. It would be criminal, however, for the Government to rely entirely on the element of surprise.

"Experience has shown that surprise may be nullified by:

"1. Disclosure coming from a large circle of military experts concerned;

"2. Mere chance, which may cause the collapse of the whole enterprise;

"3. Human failings;

"4. Weather conditions.

"The final date for striking must be fixed well in advance. Beyond that time the tension cannot be endured for long. It must be borne in mind that weather conditions can render any surprise intervention by Navy and Air Force impossible.

"This must be regarded as a most unfavorable basis of action.

"1. An effort must be made to deal the enemy a significant or the final decisive blow. Considerations of right and wrong or treaties do not enter into the matter. This will only be possible if we are not involved in a war with England on account of Poland.

"2. In addition to the surprise attack, preparations for a long war must be made, while opportunities on the continent for England are eliminated.

"The Army will have to hold positions essential to the Navy and Air Force. If Holland and Belgium are successfully occupied and held, and if France is also defeated, the fundamental conditions for a successful war against England will have been secured.

"England can then be blockaded from western France at close quarters by the Air Force, while the Navy with its submarines can extend the range of the blockade.

"Consequences:

"England will not be able to fight on the continent; daily attacks by the Air Force and Navy will cut all her life-lines; time will not be on England's side; Germany will not bleed to death on land.

"Such strategy has been shown to be necessary by World War I and subsequent military operations. World War I is responsible for the following strategic considerations which are imperative:

"1. With a more powerful Navy at the outbreak of the War, or a wheeling movement by the Army towards the Channel ports, the end would have been different.

"2. A country cannot be brought to defeat by an air force. It is impossible to attack all objectives simultaneously, and the lapse of time of a few minutes would evoke defense counter measures.

"3. The unrestricted use of all resources is essential.

"4. Once the Army, in cooperation with the Air Force and Navy, has taken the most important positions, industrial production will cease to flow into the bottomless pit of the Army's battles, and can be diverted to benefit the Air Force and Navy.

"The Army must, therefore, be capable of taking these positions. Systematic preparation must be made for the attack.

"Study to this end is of the utmost importance.

"The aim will always be to force England to her knees.

"A weapon will only be of decisive importance in winning battles, so long as the enemy does not possess it.

"This applies to gas, submarines, and air force. It would be true of the latter, for instance, as long as the English Fleet had no available countermeasures; it will no longer be the case in 1940 and 1941. Against Poland, for example, tanks will be effective, as the Polish Army possesses no countermeasures.

"Where straightforward pressure is no longer considered to be decisive, its place must be taken by the elements of surprise and by masterly handling."

The rest of the document, if the Tribunal please, deals more in detail with military plans and preparations. I think it unnecessary to read further.

The document just read is the evidence which specifically supports the allegations in Paragraph 4 (a) of Section IV (F) of the Indictment, appearing on Page 9 of the printed English text, relating to the meeting of 23 May 1939. We think it leaves nothing unproved in those allegations.

THE PRESIDENT: Mr. Alderman, perhaps you ought to read the last page and the last five lines, because they refer in terms to one of the defendants.

MR. ALDERMAN: I didn't read these, Mr. President, simply because I am convinced that they are mistranslated in the English. I will be glad to have them read in the original German.

THE PRESIDENT: Very well, if you are of that opinion.

MR. ALDERMAN: We could get it from the original German.

THE PRESIDENT: You mean that the English translation is wrong?

MR. ALDERMAN: Yes.

THE PRESIDENT: You had better inform us then if it is wrong.

MR. ALDERMAN: Did you have reference to the last paragraph headed "Working principles"?

THE PRESIDENT: Yes, the one after that.

MR. ALDERMAN: Yes. Might I ask that the German interpreter read that, as it can be translated into the other languages. It is on Page 16 of the original.

BY THE INTERPRETER: "Page 16. Purpose:

"1. Study of the entire problem;

"2. Study of the events;

"3. Study of the means needed;

"4. Study of the necessary training.

"Men with great powers of imagination and high technical training must belong to the staff, as well as officers with sober sceptic powers of understanding.

"Working principles:

"1. No one is to take part in this, who does not have to know of it.

"2. No one can find out more than he must know.

"3. When must the person in question know it at the very latest? No one may know anything before it is necessary that he know it.

"On Göring's question, the Führer decided that:

a) The armed forces determine what shall be built;

b) In the shipbuilding program nothing is to be changed;

c) The armament programs are to be modeled on the years 1943 or 1944."—Schmundt certified this text.

MR. ALDERMAN: Mr. President, the translation was closer than I had anticipated.

THE PRESIDENT: Yes.

MR. ALDERMAN: We think, as I have just said, that this document leaves nothing unproved in those allegations in the Indictment. It demonstrates that the Nazi conspirators were proceeding in accordance with a plan. It demonstrates the cold-blooded premeditation of the assault on Poland. It demonstrates that the questions concerning Danzig, which the Nazis had agitated with Poland as a political pretext, were not true questions, but were false issues, issues agitated to conceal their motive of aggressive expansion for food and "Lebensraum."

In this presentation of condemning documents, concerning the initiation of war in September 1939, I must bring to the attention of the Tribunal a group of documents concerning an address by Hitler to his chief military commanders, at Obersalzberg on

22 August 1939, just one week prior to the launching of the attack on Poland.

We have three of these documents, related and constituting a single group. The first one I do not intend to offer as evidence. The other two I shall offer.

The reason for that is this: The first of the three documents came into our possession through the medium of an American newspaperman and purported to be original minutes of this meeting at Obersalzberg, transmitted to this American newspaperman by some other person; and we had no proof of the actual delivery to the intermediary by the person who took the notes. That document, therefore, merely served to alert our Prosecution to see if it could find something better. Fortunately, we did get the other two documents, which indicate that Hitler on that day made two speeches, perhaps one in the morning, one in the afternoon, as indicated by the original minutes, which we captured. By comparison of those two documents with the first document, we concluded that the first document was a slightly garbled merger of the two speeches.

On 22 August 1939 Hitler had called together at Obersalzberg the three Supreme Commanders of the three branches of the Armed Forces, as well as the commanding generals bearing the title Commanders-in-Chief (Oberbefehlshaber).

I have indicated how, upon discovering this first document, the Prosecution set out to find better evidence of what happened on this day. In this the Prosecution succeeded. In the files of the OKW at Flensburg, the Oberkommando der Wehrmacht (Chief of the High Command of the Armed Forces), there were uncovered two speeches delivered by Hitler at Obersalzberg, on 22 August 1939. These are Documents Numbers 798-PS and 1014-PS, in our series of documents.

In order to keep serial numbers consecutive, if the Tribunal please, we have had the first document, which I do not intend to offer, marked for identification Exhibit USA-28. Accordingly, I offer the second document, 798-PS, in evidence as Exhibit USA-29, and the third document, 1014-PS, as Exhibit USA-30.

These are again, especially the first one, rather lengthy speeches, and I shall not necessarily read the entire speech.

Reading from 798-PS, which is Exhibit USA-29, the Führer speaks to the Commanders-in-Chief on 22 August 1939: "I have called you together..."

THE PRESIDENT: Is there anything to show where the speech took place?

MR. ALDERMAN: Obersalzberg.

THE PRESIDENT: How do you show that?

MR. ALDERMAN: You mean on the document?

THE PRESIDENT: Yes.

MR. ALDERMAN: I am afraid the indication "Obersalzberg" came from the first document which I have not offered in evidence. I have no doubt that the defendants will admit that Obersalzberg was the place of this speech.

The place is not very significant; it is the time.

THE PRESIDENT: Very well.

MR. ALDERMAN [Reading]:

"I have called you together to give you a picture of the political situation, in order that you may have insight into the individual element on which I base my decision to act, and in order to strengthen your confidence. After this, we will discuss military details.

"It was clear to me that a conflict with Poland had to come sooner or later. I had already made this decision in the spring."—I interpolate, I think he is there referring to the May document, which I have already read, L-79.—"But I thought I would first turn against the West in a few years, and only afterwards against the East. But the sequence cannot be fixed. One cannot close one's eyes even before a threatening situation. I wanted to establish an acceptable relationship with Poland, in order to fight first against the West, but this plan, which was agreeable to me, could not be executed, since the essential points have changed.

"It became clear to me that Poland would attack us, in case of a conflict with the West.

"Poland wants access to the sea.

"The further development became obvious after the occupation of the Memel region, and it became clear to me that under the circumstances a conflict with Poland could arise at an inopportune moment.

"I enumerate as reasons for this reflection, first of all, two personal constitutions"—I suppose he means "personalities"; that probably is an inapt translation—"my own personality, and that of Mussolini. Essentially, it depends on me, my existence, because of my political ability."

I interpolate to comment on the tremendous significance of the fact of a war, which engulfed almost the whole world, depending upon one man's personality.

"Furthermore, the fact that probably no one will ever again have the confidence of the whole German people as I do.

There will probably never again be a man in the future with more authority than I have. My existence is, therefore, a factor of great value. But I can be eliminated at any time by a criminal or an idiot.

"The second personal factor is Il Duce. His existence is also decisive. If something happens to him, Italy's loyalty to the Alliance will no longer be certain. The basic attitude of the Italian Court is against the Duce. Above all, the Court sees in the expansion of the empire a burden. The Duce is the man with the strongest nerves in Italy.

"The third factor favorable for us is Franco. We can ask only benevolent neutrality from Spain, but this depends on Franco's personality. He guarantees a certain uniformity and steadiness of the present system in Spain. We must take into account the fact that Spain does not as yet have a Fascist Party of our internal unity.

"On the other side, a negative picture, as far as decisive personalities are concerned: There is no outstanding personality in England or France."—I interpolate: I think Adolf Hitler must have overlooked one in England, perhaps many.—

"For us it is easy to make decisions. We have nothing to lose—we can only gain. Our economic situation is such, because of our restrictions, that we cannot hold out more than a few years. Göring can confirm this. We have no other choice; we must act. Our opponents risk much and can gain only a little. England's stake in a war is unimaginably great. Our enemies have men who are below average. No personalities, no masters, no men of action."

I interpolate again. Perhaps that last sentence explains what he meant by no personalities—no masters having the authority that he had over his nation.

"Besides the personal factor, the political situation is favorable for us; in the Mediterranean rivalry between Italy, France, and England; in the Orient tension, which leads to the alarming of the Mohammedan world.

"The English empire did not emerge from the last war strengthened. From a maritime point of view, nothing was achieved; conflict between England and Ireland, the South African Union became more independent, concessions had to be made to India, England is in great danger, unhealthy industries. A British statesman can look into the future only with concern.

"France's position has also deteriorated, particularly in the Mediterranean.

"Further favorable factors for us are these:

"Since Albania, there is an equilibrium of power in the Balkans. Yugoslavia carries the germ of collapse because of her internal situation.

"Rumania did not grow stronger. She is liable to attack and vulnerable. She is threatened by Hungary and Bulgaria. Since Kemal's death Turkey has been ruled by small minds, unsteady weak men.

"All these fortunate circumstances will no longer prevail in 2 or 3 years. No one knows how long I shall live. Therefore conflict better now.

"The creation of Greater Germany was a great achievement politically, but militarily it was questionable, since it was achieved through a bluff of the political leaders. It is necessary to test the military, if at all possible, not by general settlement, but by solving individual tasks.

"The relation to Poland has become unbearable. My Polish policy hitherto was in contrast to the ideas of the people. My propositions to Poland, the Danzig corridor, were disturbed by England's intervention. Poland changed her tune towards us. The initiative cannot be allowed to pass to the others. This moment is more favorable than in 2 to 3 years. An attempt on my life or Mussolini's would change the situation to our disadvantage. One cannot eternally stand opposite one another with cocked rifle. A suggested compromise would have demanded that we change our convictions and make agreeable gestures. They talked to us again in the language of Versailles. There was danger of losing prestige. Now the probability is still great that the West will not interfere. We must accept the risk with reckless resolution. A politician must accept a risk as much as a military leader. We are facing the alternative to strike or be destroyed with certainty sooner or later."—We skip two paragraphs.—

"Now it is also a great risk. Iron nerves, iron resolution...."

A long discussion follows which I think it is unnecessary to read, and then towards the end, four paragraphs from the bottom, I resume:

"We need not be afraid of a blockade. The East will supply us with grain, cattle, coal, lead, and zinc. It is a big aim, which demands great efforts. I am only afraid that at the

last minute some 'Schweinehund' will make a proposal for mediation."—And then the last paragraph of one sentence—"Göring answers with thanks to the Führer and the assurance that the Armed Forces will do their duty."

I believe I have already offered Exhibit 30, which is a shorter note entitled: "Second Speech of the Führer on 22 August 1939." Reading then from United States Exhibit 30, headed "Second Speech by the Führer on 22 August 1939:

"It may also turn out differently regarding England and France. One cannot predict it with certainty. I figure on a trade barrier, not on blockade, and with severance of relations. Most iron determination on our side. Retreat before nothing. Everybody shall have to make a point of it, that we were determined from the beginning to fight the Western Powers. A struggle for life or death. Germany has won every war as long as she was united. Iron, unflinching attitude of all superiors, greatest confidence, faith in victory, overcoming of the past by getting used to the heaviest strain. A long period of peace would not do us any good. Therefore it is necessary to expect everything. Manly bearing. It is not machines that fight each other, but men. We have the better quality of men. Mental factors are decisive. The opposite camp has weaker people. In 1918 the Nation fell down because the mental pre-requisites were not sufficient. Frederick the Great secured final success only through his mental power.

"Destruction of Poland in the foreground. The aim is the elimination of living forces, not the arrival at a certain line. Even if war should break out in the West, the destruction of Poland shall be the primary objective. Quick decision because of the season.

"I shall give a propagandistic cause for starting the war, never mind whether it be plausible or not. The victor shall not be asked, later on, whether we told the truth or not. In starting and making a war, not the Right is what matters, but Victory.

"Have no pity. Brutal attitude. Eighty million people shall get what is their right. Their existence has to be secured. The strongest has the right. Greatest severity.

"Quick decision necessary. Unshakeable faith in the German soldier. A crisis may happen only if the nerves of the leaders give way.

"First aim: Advance to the Vistula and Narew. Our technical superiority will break the nerves of the Poles. Every newly

created Polish force shall again be broken at once. Constant war of attrition.

"New German frontier according to healthy principle. Possibly a protectorate as a buffer. Military operations shall not be influenced by these reflections. Complete destruction of Poland is the military aim. To be fast is the main thing. Pursuit until complete elimination.

"Conviction that the German Wehrmacht is up to the requirements. The start shall be ordered, probably by Saturday morning."

That ends the quotation. The Tribunal will recall that in fact the start was actually postponed until September 1.

DR. OTTO STAHMER (Counsel for Defendant Göring): Mr. President, may I make a short statement on the two documents which have just been read. Both the documents which were read and also the third which was not read but to which reference was made, are not recognized by the Defense. I do not wish this objection to appear unjustified; may I therefore give this explanation:

Both the documents which were read contain a number of factual errors. They are not signed. Moreover, only one meeting took place, and that is the cause for the inaccuracy of these documents. No one present at that meeting was charged with taking down the events in the meeting stenographically, and since there are no signatures, it cannot be determined who wrote the documents and who is responsible for their reliability. The third document which was not read is, according to the photostatic copy in the Defense's document room, simply typewritten. There is no indication of place or time of execution.

THE PRESIDENT: Well, we have got nothing to do with the third document, because it has not been read.

DR. STAHMER: Mr. President, this document has nevertheless been published in the press and was apparently given to the press by the Prosecution. Consequently both the Defense and the defendants have a lively interest in giving a short explanation of the facts concerning these documents.

THE PRESIDENT: The Tribunal is trying this case in accordance with the evidence and not in accordance with what is in the press, and the third document is not in evidence before us.

MR. ALDERMAN: May it please the Tribunal, I recognize that counsel wonder how these two documents which I have just read are in our hands. They come to us from an authentic source. They are German documents. They were found in the OKW files. If they

aren't correct records of what occurred, it surprises us that with the great thoroughness with which the Germans kept accurate records, they would have had these records that didn't represent the truth in their OKW files.

THE PRESIDENT: Mr. Alderman, the Tribunal will of course hear what evidence the defendants choose to give with reference to the documents.

MR. ALDERMAN: It has occurred to me in that connection that if any of these defendants have in their possession what is a more correct transcription of the Führer's words on this occasion, the Court should consider that. On the other question referred to by counsel, I feel somewhat guilty. It is quite true that, by a mechanical slip, the press got the first document, which we never at all intended them to have. I feel somewhat responsible. It happened to be included in the document books that were handed up to the Court on Friday, because we had only intended to refer to it and give it an identification mark and not to offer it. I had thought that no documents would be released to the press until they were actually offered in evidence. With as large an organization as we have, it is very difficult to police all those matters.

THE PRESIDENT: Mr. Alderman, the Tribunal would like to know how many of these documents are given to the press.

MR. ALDERMAN: I can't answer that.

COL. STOREY: May it please the Tribunal, it is my understanding that as and when documents are introduced in evidence, then they are made available to the press.

THE PRESIDENT: In what numbers?

COL. STOREY: I think about 250 copies of each one, about 200 or 250 mimeographed copies.

THE PRESIDENT: The Tribunal think that the defendants' counsel should have copies of these documents before any of them are handed to the press. I mean to say that in preference to gentlemen of the press the defendants' counsel should have the documents.

COL. STOREY: Your Honor, if it please the Court, I understand that these gentlemen had the 10 documents on Saturday morning or Sunday morning. They had them for 24 hours, copies of the originals of these documents that have been read today, down in the Information Center.

THE PRESIDENT: I stated, in accordance with the provisional arrangement which was made, and which was made upon your representations, that 10 copies of the trial briefs and five copies

of the volumes of documents should be given to the defendants' counsel.

COL. STOREY: Sir, I had the receipts that they were deposited in the room.

THE PRESIDENT: Yes, but what I am pointing out to you, Colonel Storey, is that if 250 copies of the documents can be given to the press, then the defendants' counsel should not be limited to five copies.

COL. STOREY: If Your Honor pleases, the 250 copies are the mimeographed copies in English when they are introduced in evidence. I hold in my hands, or in my briefcase here, a receipt that the document books and the briefs were delivered 24 hours in advance.

THE PRESIDENT: You don't seem to understand what I am putting to you, which is this: That if you can afford to give 250 copies of the documents in English to the press, you can afford to give more than five copies to the defendants' counsel—one each. Well, we do not need to discuss it further. In the future that will be done.

DR. DIX: May I say, then, that of every document in evidence each defense counsel will receive one copy; it will not be just one for several members of the Defense.

THE PRESIDENT: Go on, Mr. Alderman.

MR. ALDERMAN: The aggressive war having been initiated in September 1939, and Poland having been totally defeated shortly after the initial assaults, the Nazi aggressors converted the war into a general war of aggression extending into Scandinavia, into the Low Countries, and into the Balkans. Under the division of the case between the Four Chief Prosecutors, this aspect of the matter is left to presentation by the British Chief Prosecutor.

Another change that we have made in our plan, which I perhaps should mention, is that following the opening statement by the British Chief Prosecutor on Count Two, we expect to resume the detailed handling of the later phases of the aggressive war phase of the case. The British, instead of the Americans, will deal with the details of aggression against Poland. Then with this expansion of the war in Europe and then, as a joint part of the American case under Count One and the British case under Count Two, I shall take up the aggression against Russia and the Japanese aggression in detail. So that the remaining two subjects, with which I shall ultimately deal in more detail, and now by presentation of specifically significant documents, are the case of the attack on the Union of Soviet Socialist Republics on the 22nd

of June 1941 and the case on collaboration between Italy and Japan and Germany and the resulting attack on the United States on the 7th of December 1941.

As to the case on aggression against the Soviet Union, I shall at this point present two documents. The first of these two documents establishes the premeditation and deliberation which preceded the attack. Just as, in the case of aggression against Czechoslovakia, the Nazis had a code name for the secret operation "Case Green", so in the case of aggression against the Soviet Union, they had a code name "Case Barbarossa."

THE PRESIDENT: How do you spell that?

MR. ALDERMAN: B-a-r-b-a-r-o-s-s-a, after Barbarossa of Kaiser Friederich. From the files of the OKW at Flensburg we have a secret directive, Number 21, issued from the Führer's headquarters on 18 December 1940, relating to Case Barbarossa. This directive is more than six months in advance of the attack. Other evidence will show that the planning occurred even earlier. The document is signed by Hitler and is initialled by the Defendant Jodl and the Defendant Keitel. This secret order was issued in nine copies. The captured document is the fourth of these nine copies. It is Document Number 446-PS in our numbered series.

I offer it in evidence as Exhibit USA-31.

If the Tribunal please, I think it will be sufficient for me to read the first page of that directive, the first page of the English translation. The paging may differ in the German original.

It is headed "The Führer and Commander-in-Chief of the German Armed Forces," with a number of initials, the meaning of which I don't know, except OKW. It seems to be indicated to go to GK chiefs, which I suppose to be General Kommando chiefs:

"The Führer's headquarters, 18 December 1940. Secret. Only through officer. Nine copies. 4th copy. Directive Number 21, Case Barbarossa.

"The German Armed Forces must be prepared to crush Soviet Russia in a quick campaign before the end of the war against England. (Case Barbarossa.)

"For this purpose the Army will have to employ all available units with the reservation that the occupied territories will have to be safeguarded against surprise attacks.

"For the Eastern campaign the Air Force will have to free such strong forces for the support of the Army that a quick completion of the ground operations may be expected and that damage of the eastern German territories will be avoided as much as possible. This concentration of the main

effort in the East is limited by the following reservation: That the entire battle and armament area dominated by us must remain sufficiently protected against enemy air attacks and that the attacks on England, and especially the supply for them, must not be permitted to break down.

"Concentration of the main effort of the Navy remains unequivocally against England also during an Eastern campaign.

"If occasion arises I will order the concentration of troops for action against Soviet Russia eight weeks before the intended beginning of operations.

"Preparations requiring more time to start are—if this has not yet been done—to begin presently and are to be completed by 15 May 1941.

"Great caution has to be exercised that the intention of an attack will not be recognized.

"The preparations of the High Command are to be made on the following basis:

"1. General Purpose:

The mass of the Russian Army in western Russia is to be destroyed in daring operations by driving forward deep wedges with tanks, and the retreat of intact battle-ready troops into the wide spaces of Russia is to be prevented.

"In quick pursuit, a line is to be reached from where the Russian Air Force will no longer be able to attack German Reich territory. The first goal of operations is the protection from Asiatic Russia from the general line Volga-Archangel. In case of necessity, the last industrial area in the Urals left to Russia could be eliminated by the Luftwaffe.

"In the course of these operations the Russian Baltic Sea Fleet will quickly erase its bases and will no longer be ready to fight.

"Effective intervention by the Russian Air Force is to be prevented through powerful blows at the beginning of the operations."

Another secret document, captured from the OKW files...

THE PRESIDENT: Mr. Alderman, perhaps that would be a convenient time to adjourn for 10 minutes.

[A recess was taken.]

MR. ALDERMAN: If it pleases the Tribunal, another secret document captured from the OKW files, we think establishes the motive for the attack on the Soviet Union. It also establishes the

full awareness of the Nazi conspirators of the Crimes against Humanity which would result from their attack. The document is a memorandum of 2 May 1941, concerning the result of a discussion on that day with the state secretaries concerning the Case Barbarossa. The document is initialled by a Major Von Gusovius, a member of the staff of General Thomas set up to handle the economic exploitations of the territory occupied by the Germans during the course of the aggression against Russia. The document is numbered 2718-PS in our numbered series of documents. I offer it in evidence as Exhibit USA-32.

I shall simply read the first two paragraphs of this document, including the introductory matter:

"Matter for Chief; 2 copies; first copy to files 1a. Second copy to General Schubert, May 2, 1941."

"Memorandum about the result of today's discussion with the state secretaries about Barbarossa.

"1. The War can only be continued if all Armed Forces are fed by Russia in the third year of war.

"2. There is no doubt that as a result many millions of people will be starved to death if we take out of the country the things necessary for us."

That document has already been commented on and quoted from in Mr. Justice Jackson's opening statement. The staggering implications of that document are hard to realize. In the words of the document, the motive for the attack was that the war which the Nazi conspirators had launched in September 1939 "can only be continued if all Armed Forces are fed by Russia in the third year of the war. Perhaps there never was a more sinister sentence written than the sentence in this document which reads:

"There is no doubt that as a result many millions of people will be starved to death if we take out of the country the things necessary for us."

The result is known to all of us.

I turn now to the Nazi collaboration with Italy and Japan and the resulting attack on the United States on 7 December 1941. With the unleashing of the German aggressive war against the Soviet Union in June 1941, the Nazi conspirators, and in particular, the Defendant Ribbentrop, called upon the eastern co-architect of the New Order, Japan, to attack in the rear. Our evidence will show that they incited and kept in motion a force reasonably calculated to result in an attack on the United States. For a time, they maintained their preference that the United States not be involved in

the conflict, realizing the military implication of an entry of the United States into the war. However, their incitement did result in the attack on Pearl Harbor, and long prior to that attack, they had assured the Japanese that they would declare war on the United States should a United States-Japanese conflict break out. It was in reliance on those assurances that the Japanese struck at Pearl Harbor.

On the present discussion of this phase of the case, I shall offer only one document to prove this point. The document was captured from the files of the German Foreign Office. It consists of notes dated 4 April 1941, signed by "Schmidt," regarding discussions between the Führer and the Japanese Foreign Minister Matsuoka, in the presence of the Defendant Ribbentrop. The document is numbered 1881-PS in our numbered series, and I offer it in evidence as Exhibit USA-33. In the original, it is in very large, typewritten form in German. I shall read what I deem to be the pertinent parts of this document, beginning with the four paragraphs; first reading the heading, the heading being:

"Notes regarding the discussion between the Führer and the Japanese Foreign Minister Matsuoka, in the presence of the Reich Foreign Minister and the Reich Minister of State Meissner, in Berlin, on 4 April 1941.

"Matsuoka then also expressed the request that the Führer should instruct the proper authorities in Germany to meet as broad-mindedly as possible the wishes of the Japanese Military Commission. Japan was in need of German help particularly concerning the U-boat warfare, which could be given by making available to them the latest experiences of the war as well as the latest technical improvements and inventions."—For the record, I am reading on what is page 6. of the German original.—

"Japan would do her utmost to avoid a war with the United States. In case that country should decide to attack Singapore, the Japanese Navy, of course, had to be prepared for a fight with the United States, because in that case America probably would side with Great Britain. He (Matsuoka) personally believed that the United States could be restrained, by diplomatic exertions, from entering the war at the side of Great Britain. Army and Navy had, however, to count on the worst situation,—that is, with war against America. They were of the opinion that such a war would extend for 5 years or longer, and would take the form of guerilla warfare in the Pacific, and would be fought out in the South

Sea. For this reason the German experiences in her guerilla warfare are of the greatest value to Japan. It was a question how such a war would best be conducted and how all the technical improvements of submarines, in all details such as periscopes and such like, could best be exploited by Japan.

"To sum up, Matsuoka requested that the Führer should see to it that the proper German authorities would place at the disposal of the Japanese those developments and inventions concerning navy and army which were needed by the Japanese.

"The Führer promised this and pointed out that Germany, too, considered a conflict with the United States undesirable, but that it had already made allowances for such a contingency. In Germany one was of the opinion that America's contributions depended upon the possibilities of transportation, and that this again is conditioned by the available tonnage. Germany's war against tonnage, however, means a decisive weakening, not merely against England, but also against America. Germany has made her preparations so that no American could land in Europe. She would conduct a most energetic fight against America with her U-boats and her Luftwaffe, and due to her superior experience, which would still have to be acquired by the United States, she would be vastly superior, and that quite apart from the fact that the German soldiers naturally rank high above the Americans.

"In the further course of the discussion, the Führer pointed out that Germany, on her part, would immediately take the consequences if Japan would get involved with the United States. It did not matter with whom the United States would first get involved, whether with Germany or with Japan. They would always try to eliminate one country at a time, not to come to an understanding with the other country subsequently, but to liquidate this one just the same. Therefore Germany would strike, as already mentioned, without delay in case of a conflict between Japan and America, because the strength of the tripartite powers lies in their joint action; their weakness would be if they would let themselves be beaten individually.

"Matsuoka once more repeated his request that the Führer might give the necessary instructions, in order that the proper German authorities would place at the disposal of the Japanese the latest improvements and inventions, which

are of interest to them because the Japanese Navy had to prepare immediately for a conflict with the United States.

"As regards Japanese-American relationship, Matsuoka explained further that he has always declared in his country that sooner or later a war with the United States would be unavoidable, if Japan continued to drift along as at present. In his opinion this conflict would happen rather sooner than later. His argumentation went on, why should Japan, therefore, not decisively strike at the right moment and take the risk upon herself of a fight against America? Just thus would she perhaps avoid a war for generations, particularly if she gained predominance in the South Seas. There are, to be sure, in Japan, many who hesitate to follow those trends of thought. Matsuoka was considered in those circles a dangerous man with dangerous thoughts. He, however, stated that if Japan continued to walk along her present path, one day she would have to fight anyway and that this would then be under less favorable circumstances than at present.

"The Führer replied that he could well understand the situation of Matsuoka, because he himself had been in similar situations (the clearing of the Rhineland, declaration of sovereignty of Armed Forces). He too was of the opinion that he had to exploit favorable conditions and accept the risk of an anyhow unavoidable fight, at a time when he himself was still young and full of vigor. How right he was in his attitude was proven by events. Europe now was free. He would not hesitate a moment to reply instantly to any widening of the war, be it by Russia, be it by America. Providence favored those who will not let dangers come to them, but who will bravely face them.

"Matsuoka replied that the United States, or rather their ruling politicians, had recently still attempted a last maneuver towards Japan, by declaring that America would not fight Japan on account of China or the South Seas, provided that Japan gave free passage to the consignment of rubber and tin to America to their place of destination. However, America would war against Japan the moment she felt that Japan entered the war with the intention to assist in the destruction of Great Britain. Such an argumentation naturally did not miss its effect upon the Japanese, because of the education oriented on English lines which many had received.

"The Führer commented on this, that this attitude of America did not mean anything, but that the United States had the

hope that, as long as the British World Empire existed, one day they could advance against Japan together with Great Britain, whereas, in case of the collapse of the World Empire, they would be totally isolated and could not do anything against Japan.

"The Reich Foreign Minister interjected that the Americans precisely under all circumstances wanted to maintain the powerful position of England in East Asia, but that on the other hand it is proved by this attitude, to what extent she fears a joint action of Japan and Germany.

"Matsuoka continued that it seemed to him of importance to give to the Führer an absolutely clear picture of the real attitude inside Japan. For this reason he also had to inform him regretfully of the fact that he, Matsuoka, in his capacity as Japanese Minister for Foreign Affairs, could not utter in Japan a single word of all that he had expounded before the Führer and the Reich Foreign Minister regarding his plans. This would cause him serious damage in political and financial circles. Once before, he had committed the mistake, before he became Japanese Minister for Foreign Affairs, to tell a close friend something about his intentions. It seems that the latter had spread these things, and thus brought about all sorts of rumors, which he, as Foreign Minister, had to oppose energetically, though as a rule he always tells the truth. Under these circumstances he also could not indicate how soon he could report on the questions discussed to the Japanese Premier or to the Emperor. He would have to study exactly and carefully, in the first place, the development in Japan, so as to make his decision at a favorable moment, to make a clear breast of his proper plans towards the Prince Konoye and the Emperor. Then the decision would have to be made within a few days, because the plans would otherwise be spoiled by talk.

"Should he, Matsuoka, fail to carry out his intentions, that would be proof that he is lacking in influence, in power of conviction, and in tactical capabilities. However, should he succeed, it would prove that he had great influence in Japan. He himself felt confident that he would succeed.

"On his return, being questioned, he would indeed admit to the Emperor, the Premier and the Ministers for the Navy and the Army, that Singapore had been discussed; he would, however, state that it was only on a hypothetical basis.

"Besides this, Matsuoka made the express request not to cable in the matter of Singapore, because he had reason to

fear that by cabling, something might leak out. If necessary, he would send a courier.

"The Führer agreed and assured, after all, that he could rest entirely assured of German reticence.

"Matsuoka replied he believed indeed in German reticence, but unfortunately could not say the same for Japan.

"The discussion was terminated after the exchange of some personal parting words.

"Berlin, the 4th of April 1941. (Signed) Schmidt."

This completes the presentation of what I have called the "handful of selected documents," offered not as a detailed treatment of any of these wars of aggression, but merely to prove the deliberate planning, the deliberate premeditation with which each of these aggressions was carried out.

I turn to a more detailed and more or less chronological presentation of the various stages of the aggression.

THE PRESIDENT: The Tribunal will now adjourn until 10 o'clock tomorrow.

[The Tribunal adjourned until 27 November 1945 at 1000 hours.]

SIXTH DAY

Tuesday, 27 November 1945

Morning Session

THE PRESIDENT: I call on the counsel for the United States. Mr. Alderman, before you begin, I think it would be better, for the purpose of the Tribunal, when citing documents, if you would refer to them not only by the United States exhibit number and the PS document number, but also by the document book identification. Each document book, as I understand it, has either a letter or a number. They are numbered alphabetically, I think. If that is not done, when we have got a great number of document books before us, it is very difficult to find where the particular exhibit is.

MR. ALDERMAN: I can see that, yes.

May it please the Tribunal, the handful of selected documents which I presented yesterday constitute a cross section of the aggressive war case, as a whole. They do not purport to cover the details of any of the phases of the aggressive war case. In effect they do amount to a running account of the entire matter.

Before moving ahead with more detailed evidence, I think it might be helpful to pause at this point, to present to the Tribunal a chart. This chart presents visually some of the key points in the development of the Nazi aggression. The Tribunal may find it helpful as a kind of visual summary of some of the evidence received yesterday and also as a background for some of the evidence which remains to be introduced. I am quite certain that, as your minds go back to those days, you remember the maps that appeared from time to time in the public press, as these tremendous movements developed in Europe. I am quite certain that you must have formed the concept, as I did in those days, of the gradually developing head of a wolf.

In that first chart you only have an incipient wolf. He lacks a lower jaw, the part shown in red, but when that wolf moved forward and took over Austria—the Anschluss—that red portion became solid black. It became the jaw of the wolf, and when that lower jaw was acquired, Czechoslovakia was already, with its head and the main part of its body, in the mouth of the wolf.

Then on chart two you see the mountainous portions, the fortified portions of Czechoslovakia. In red, you see the Sudetenland

territories which were first taken over by the Pact of Munich, whereupon Czechoslovakia's head became diminutive in the mouth of the wolf.

And in chart three you see the diminishing head in red, with its neck practically broken, and all that was necessary was the taking over of Bohemia and Moravia and the wolf's head became a solid, black blot on the map of Europe, with arrows indicating incipient further aggressions, which, of course, occurred.

That is the visual picture that I have never been able to wipe out of my mind, because it seems to demonstrate the inevitability of everything that went along after the taking over of Austria.

The detailed more or less chronological presentation of the aggressive war case will be divided into seven distinct sections. The first section is that concerning preparation for aggression during the period of 1933 to 1936, roughly. The second section deals with aggression against Austria. The third section deals with aggression against Czechoslovakia. The fourth section deals with aggression against Poland and the initiation of actual war. For reasons of convenience, the details of the Polish section will be presented after the British Chief Prosecutor presents his opening statement to the Tribunal. The fifth section deals with the expansion of the war into a general war of aggression, by invasions into Scandinavia, the Lowlands, and the Balkans. The details on this section of the case will be presented by the British Chief Prosecutor. The sixth section deals with aggression against the Soviet Union, which I shall expect to present. For reasons of convenience again, the details on this section, like the details on aggression against Poland, will be presented after the British Prosecutor has made his opening statement to the Tribunal. The seventh section will deal with collaboration with Italy and Japan and the aggression against the United States.

I turn now to the first of these sections, the part of the case concerning preparation for aggression during the period 1933 to 1936. The particular section of the Indictment to which this discussion addresses itself is paragraph IV (F) and sub-paragraph 2 (a), (b), (c), (d), (e), and (f), which I need not read at a glance, as the Tribunal will recall the allegation. It will be necessary, as I proceed, to make reference to certain provisions of the Charter, and to certain provisions of the Treaty of Versailles, and the Treaty between the United States and Germany restoring friendly relations, 25 August 1921, which incorporates certain provisions of the Treaty of Versailles and certain provisions of the Rhine Treaty of Locarno of 16 October 1925.

THE PRESIDENT: Mr. Alderman, is it not intended that this document book should have some identifying letter or number?

MR. ALDERMAN: "M", I am informed. I do not offer those treaties in evidence at this time, because the British will offer all the pertinent treaties in their aspect of the case.

The Nazi plans for aggressive war started very soon after World War I. Their modest origin and rather fantastic nature, and the fact that they could have been interrupted at numerous points, do not detract from the continuity of the planning. The focus of this part of the Indictment on the period from 1933 to 1945, does not disassociate these events from what occurred in the entire preceding period. Thus, the ascendancy of Hitler and the Nazis to political power in 1933, was already a well-advanced milestone on the German road to progress.

By 1933 the Nazi Party, the NSDAP, had reached very substantial proportions. At that time, their plans called for the acquisition of political control of Germany. This was indispensable for the consolidation within the country of all the internal resources and potentialities.

As soon as there was sufficient indication of successful progress along this line of internal consolidation, the next step was to become disengaged from some of the external disadvantages of existing international limitations and obligations. The restrictions of the Versailles Treaty were a bar to the development of strength in all the fields necessary, if one were to make war. Although there had been an increasing amount of circumvention and violation from the very time that Versailles came into effect, such operations under disguise and subterfuge could not attain proportions adequate for the objectives of the Nazis. To get the Treaty of Versailles out of the way was indispensable to the development of the extensive military power which they had to have for their purposes. Similarly, as part of the same plan and for the same reasons, Germany withdrew from the Disarmament Conference and from the League of Nations. It was impossible to carry out their plans on the basis of existing international obligations or of the orthodox kind of future commitments.

The points mentioned in this Paragraph IV (F) 2 of the Indictment are now historical facts of which we expect the Tribunal to take judicial notice.

It goes without saying that every military and diplomatic operation was preceded by a plan of action and a careful coordination of all participating forces. At the same time each point was part of a long-prepared plan of aggression. Each represents a necessary

step in the direction of the specific aggression which was subsequently committed.

To develop an extensive argument would, perhaps, be the unnecessary laboring of the obvious. What I intend to say is largely the bringing to light of information disclosed in illustrative documents which were hitherto unavailable.

The three things of immediate international significance referred to in this Paragraph IV (F) 2 of the Indictment are:

First, the withdrawal from the Disarmament Conference and the League of Nations; second, the institution of compulsory military service; and, third, the reoccupation of the demilitarized zone of the Rhineland. Each of these steps was progressively more serious than the matter of international relations. In each of these steps Germany anticipated the possibility of sanction being applied by other countries and, in particular, a strong military action from France, with the possible assistance of England. However, the conspirators were determined that nothing less than a preventive war would stop them, and they also estimated correctly, that no one or combination of Big Powers would undertake the responsibility of such a war. The withdrawal from the Disarmament Conference and from the League of Nations was, of course, action that did not violate any international obligation. The League Covenant provided the procedure for withdrawal. However, in this case and as part of the bigger plan, the significance of these actions cannot be disassociated from the general conspiracy and the plans for aggression. The announcement of the institution of universal military service was a more daring action with a more overt significance. It was a violation of Versailles, but they got away with it. Then, came the outright military defiance, the occupation of the demilitarized zone of the Rhineland.

Still on the Indictment, Paragraph IV (F) 2, which alleges the determination of the Nazi conspirators to remove the restrictions of Versailles, the fact that the Nazi plans in this respect started very early is not only confirmed by their own statements, but they boasted about their long planning and careful execution.

I read to you yesterday at length from our Exhibit 789-PS, Exhibit USA-23, Hitler's speech to all Supreme Commanders, 23 November 1939. I need not read it again. He stated there that his primary goal was to wipe out Versailles. After 4 years of actual war, the Defendant Jodl, as Chief of the General Staff of the Armed Forces, delivered an address to the Reich and to the Gauleiter in which he traced the development of German strength. The seizure of power to him meant the restoration of fighting sovereignty, in-

cluding conscription, occupation of the Rhineland, and rearmament, with special emphasis on modern armor and air forces.

I have, if the Tribunal please, our Document Number L-172. It is a photostat of a microfilm of a speech by General Jodl, and I offer that photostat as Exhibit USA-34. I shall read, if the Tribunal please, only a part of that, but starting at the beginning.

The speech is entitled "The Strategic Position at the Beginning of the Fifth Year of War." It is a kind of retrospective summary by the Defendant General Jodl. "A lecture by the Chief of the General Staff of the Armed Forces to the Reich- and Gauleiter, delivered in Munich on 7 November 1943." I am reading from the English translation:

"Introduction: Reichsleiter Bormann has requested me to give you a review today of the strategic position at the beginning of the fifth year of war.

"I must admit that it was not without hesitation that I undertook this none-too-easy task. It is not possible to do it justice with a few generalities. It is not necessary to talk about what will come but one must say frankly what the situation is. No one, the Führer has ordered, may know more or be told more than he needs for his own immediate task, but I have no doubt at all in my mind, gentlemen, but that you need a great deal, in order to be able to cope with your tasks. It is in your Gaue, after all, and among their inhabitants that all the widespread enemy propaganda, defeatism, and malicious rumors are concentrated. Up and down the country the devil of subversion strides. All the cowards are seeking a way out, or—as they call it—a political solution. They say we must negotiate while there is still something in hand, and all these slogans are made use of to attack the natural feeling of the people, that in this war there can only be a fight to the end. Capitulation is the end of the nation; the end of Germany. Against this wave of enemy propaganda and cowardice you need more than force. You need to know the true situation, and for this reason I believe that I am justified in giving you a perfectly open and unvarnished account of the present state of affairs. This is no forbidden disclosure of secrets, but a weapon which may perhaps help you to fortify the morale of the people. For this war will not only be decided by force of arms, but by the will to resist of the entire people. Germany was broken in 1918 not at the front but at home. Italy suffered not military defeat but moral defeat. She broke down internally. The result has been not the peace she expected but—through the cowardice of these criminal trai-

tors—a fate a thousand times harder than continuation of the war at our side would have brought to the Italian people. I can rely on you, gentlemen, that since I give concrete figures and data concerning our own strength, you will treat these details as your secret; all the rest is at your disposal, without restriction, for application in your activities as leaders of the people.

"The necessity and objectives of this war were clear to all and everyone at the moment when we entered upon the War of Liberation of Greater Germany and, by attacking, parried the danger which menaced us . . . both from Poland and from the Western Powers. Our further incursions into Scandinavia, in the direction of the Mediterranean and into Russia—these also aroused no doubts concerning the general conduct of the war, so long as we were successful. It was not until more serious set-backs were encountered and our general situation began to become increasingly acute, that the German people began to ask themselves whether, perhaps, we had not undertaken more than we could do and set our aims too high. To provide an answer to this questioning and to furnish you with certain points of view for use in your own work of enlightenment, is one of the main points of my present lecture. I shall divide it into three parts:

"I. A review of the most important questions of past developments;

"II. Consideration of the present situation;

"III. The foundations of our confidence in victory.

"In view of my position as Military Advisor to the Führer, I shall confine myself in my remarks to the problems of my own personal sphere of action, fully appreciating at the same time, that in view of the Protean nature of this war, I shall in this way, be giving expression to only one aspect of the events.

"I. The review:

"1. The fact that the National Socialist movement and its struggle for internal power were the preparatory stage of the outer liberation from the bonds of the dictate of Versailles, is not one on which I need expatiate, in this circle. I should like, however, to mention at this point how clearly all thoughtful professional soldiers realize what an important part has been played by the National Socialist movement in reawakening the military spirit (the Wehrwille), in nurturing fighting strength (the Wehrkraft), and in rearming

the German people. In spite of all the virtue inherent in it, the numerically small Reichswehr would never have been able to cope with this task, if only because of its own restricted radius of action. Indeed, what the Führer aimed at—and has so happily been successful in bringing about—was the fusion of these two forces.

"2. The seizure of power . . ." —I invite the Tribunal's attention to the frequency with which that expression occurs in all of these documents.— "The seizure of power by the Nazi Party in its turn had meant, in the first place, the restoration of military sovereignty."

That is the German word "Wehrhoheit"—a kind of euphemism there—"the highness of defense." I think it really means "fighting sovereignty." Wehrhoheit also meant conscription, occupation of the Rhineland and rearmament, with special emphasis being laid on the creation of a modern armored and air arm.

"3. The Austrian Anschluss . . ." —Anschluss means "locking on to," I think. They latched on to Austria and— "The Austrian Anschluss, in its turn, brought with it not only the fulfillment of an old national aim, but also had the effect both of reinforcing our fighting strength and of materially improving our strategic position. Whereas, up until then, the territory of Czechoslovakia had projected in a most menacing way right into Germany (a wasp waist in the direction of France and an air base for the Allies, in particular Russia), Czechoslovakia herself was now enclosed by pincers."

I wish the Tribunal would contemplate the chart a moment and see that worm-like form of Czechoslovakia, which General Jodl calls a "wasp waist in the direction of France," and then he very accurately described what happened when Austria was taken by the Anschluss, that the "wasp waist" was "enclosed in the pincers."

I resume reading:

"Her own strategic position had now become so unfavorable that she was bound to fall a victim to any attack pressed home with vigor before effective aid from the West could be expected to arrive.

"This possibility of aid was furthermore made more difficult by the construction of the West Wall, which, in contradistinction to the Maginot Line, was not a measure based on debility and resignation but one intended to afford rear coverage for an active policy in the East.

"4. The bloodless solution of the Czech conflict in the autumn of 1938 and spring of 1939"—that is—the two phases in Czechoslovakia— "and the annexation of Slovakia rounded off the territory of Greater Germany in such a way that it now became possible to consider the Polish problem on the basis of more or less favorable strategic premises."—I think it needs nothing more than a glance at the progressive chart to see what those favorable strategic premises were.—

"5. This brings me to the actual outbreak of the present war, and the question which next arises is whether the moment for the struggle with Poland, in itself unavoidable, was favorably selected or not. The answer to this question is all the less in doubt, because the relatively strong opponent collapsed more quickly than expected, and the Western Powers who were Poland's friends, although they did declare war on us and form a second front, nevertheless made no use of the possibilities open to them of wresting the initiative from our hands. Concerning the course taken by the Polish campaign, nothing further need be said but that it proved to an extent which surprised the whole world a fact which until then had not been certain by any means, namely, the high state of efficiency of the young armed forces of Greater Germany."

If the Court please, there is a long review by General Jodl in this document. I could read on with interest and some enthusiasm, but I believe I have read enough to show that General Jodl by this document identifies himself fully with the Nazi movement. This document shows that he was not a mere soldier. Insofar as he is concerned, it identifies the military with the political, and the immediate point on which I had offered the document was to show the deliberation with which the Treaty of Versailles was abrogated by Germany and the demilitarized zone of the Rhineland was militarized and fortified.

In one of Adolf Hitler's reviews of the 6-year period between his ascendancy to power and the outbreak of hostilities, he not only admitted but boasted about the orderly and coordinated long-range planning. I bring up again, if the Tribunal please, the Document L-79, which was offered in evidence yesterday as Exhibit USA-27. That is the minutes of a conference of the Führer by Schmundt, his adjutant. In as large a staff as ours we inevitably fall into a kind of patois or lingo, as Americans say. We also refer to this as "Little Schmundt." The large file that I offered yesterday, we call "Big Schmundt."

At this point, I merely wish to read two sentences from Page 1 of that document which we call "Little Schmundt."

"In the period 1933 to 1939 progress was made in all fields. Our military system improved enormously."

And then, just above the middle of the second page of the English translation:

"The period which lies behind us has indeed been put to good use. All measures have been taken in the correct sequence and in harmony with our aims."

One of the most significant direct preparations for aggressive war is found in the secret Reich Defense Law of 21 May 1935, which I offered in evidence yesterday as Exhibit USA-24 and commented on then. I need not repeat that comment. The law went into effect upon its passage. It stated at the outset that it was to be made public instantly, but at the end of it Adolf Hitler signed the decree ordering that it be kept secret. I commented on that sufficiently yesterday.

General Thomas, Thomas, as we call him, who was in charge of War and Armament Economy and for some time a high ranking member of the German High Council, refers to this law as "the cornerstone of war preparations." He points out that, although the law was not made public until the outbreak of war, it was put into immediate execution as a program of preparation.

I ask the Tribunal to take judicial notice of General Thomas' work, *A History of the German War- and Armament-Economy, 1923-1944,* Page 25. We have the volume here, in German, so that anyone who wishes may examine it. I don't care to offer the entire volume in evidence unless the Court think I should. We do give it an exhibit number, Exhibit USA-35, but I simply should like to place it in the files as a reference work implementing judicial notice, if that is practicable.

THE PRESIDENT: You want it simply for the purpose of showing that General Thomas said that that law was the cornerstone of war? That has already been passed into the record.

MR. ALDERMAN: I want to say to counsel for the defendants that it is here if they care to consult it at any time.

THE PRESIDENT: Very well.

MR. ALDERMAN: I should have identified it by our number, 2353-PS.

This secret law remained in effect until 4 September 1938, at which time it was replaced by another secret Defense Law, revising the system of defense organization and directing more detailed preparations for the approaching status of mobilization, which I think was the euphemism for war.

These laws will be discussed more extensively in connection with other sections of our presentation. They have been discussed by Mr. Dodd in connection with the economic preparations for the war.

The second secret Defense Law I offer in evidence as our serial number 2194-PS. I offer it as Exhibit USA-36.

As to that document I only intend to read the two covering letters:

"Reich Defense Law; the Ministry for Economy and Labor, Saxony; Dresden 6; 4 September 1939; Telephone: 52.151, long distance; Top Secret.

"Transportation Section, attention of Construction Chief Counsellor Hirche or representative in the office; stamp of receipt of the Reich Protector in Bohemia and Moravia; received Prague, 5 September 1939, No. 274.

"Enclosed please find a copy of the Reich Defense Law of 4 September 1938 and a copy each of the decrees of the Reich Minister of Transportation, dated 7 October 1938, RL/W/ 10.2212/38, Top Secret, and 17 July 1939, RL/LV 1.2173/39, Top Secret, for your information and observance.

"By order, signed Kretschmar. 3 inclosures. Stamp: complete to Dresden, 4 September 1939, signed Schneider.

"Receipt for the letter of 4 September 1939, with 3 inclosures, signed 5 September 1939, and returned to Construction Counsellor Kretschmar."

The whole point being that it was enclosing a second secret Reich Defense Law under top-secret cover.

Now, next I refer to Indictment, Paragraph IV (F) 2 (a). That paragraph of the Indictment refers to four points:

(1) Secret rearmament from 1933 to March 1935; (2) the training of military personnel (that includes secret or camouflage training); (3) production of munitions of war; and, (4) the building of an air force.

All four of these points are included in the general plan for the breach of the Treaty of Versailles and for the ensuing aggressions. The facts of rearmament and of its secrecy are self-evident from the events that followed. The significant phase of this activity insofar as the Indictment is concerned, lies in the fact that all this was necessary in order to break the barriers of the Versailles Treaty and of the Locarno Pact, and necessary to the aggressive wars which were to follow. The extent and nature of those activities could only have been for aggressive purposes, and the highest importance which the Government attached to the secrecy of the

program is emphasized by the disguised financing, both before and after the announcement of conscription and the rebuilding of the Army, 16 March 1935.

I have, if the Court please, an unsigned memorandum by the Defendant Schacht dated 3 May 1935 entitled "The Financing of the Armament Program" (Finanzierung der Rüstung). As I say, it is not signed by the Defendant Schacht, but he identified it as being his memorandum in an interrogation on the 16th of October 1945. I would assume that he would still admit that it is his memorandum. That memorandum has been referred to but I believe not introduced or accepted in evidence. I identify it by our Number 1168-PS, and I offer it in evidence as Exhibit USA-37.

I think it is quite significant, and with the permission of the Court I shall read the entire memorandum, reminding you that the German interpreter has the original German before him to read into the transcript. "Memorandum from Schacht to Hitler" identified by Schacht as Exhibit A, interrogation 16 October 1945, Page 40. May 3, 1935 is the date of the memorandum.

"Financing of Armament. The following explanations are based upon the thought that the accomplishment of the armament program with speed and in quantity is the problem of German politics; that everything else therefore should be subordinated to this purpose as long as the main purpose is not imperiled by neglecting all other questions. Even after March 16, 1935 the difficulty remains that one cannot undertake the open propagandistic treatment of the German people for support of armament without endangering our position internationally (without loss to our foreign trade). The already nearly impossible financing of the armament program is rendered hereby exceptionally difficult.

"Another supposition must also be emphasized. The printing press can be used only for the financing of armament to such a degree as permitted by maintaining of the money value. Every inflation increases the prices of foreign raw materials and increases the domestic prices and is therefore like a snake biting its own tail. The circumstance that our armament had to be camouflaged completely till 16 March 1935, and since this date the camouflage had to be continued to an even larger extent, made it necessary to use the printing press (bank note press) already at the beginning of the whole armament program, while it would have been natural to start it (i. e., the printing press) at the final point of finance. In the portfolio of the Reichsbank are segregated bills of exchange for this purpose (that is, armament) of 3,775 mil-

lions and 866 millions, altogether 4,641 millions, out of which bills of exchange for armament amount to 2,374 million Reichsmark, that is of April 30, 1935. The Reichsbank has invested the amount of marks under its jurisdiction, but belonging to foreigners, in bank notes of armament.

"Our armaments are also financed partly with the credits of our political opponents. Furthermore, 500 million Reichsmark were used for financing of armaments which originated out of the federal loans which were invested in the saving banks in the year 1935. In the regular budget the following amounts were provided for the Armed Forces:

"For the budget period 1933 to 1934—750 million Reichsmark; for the budget period 1934 to 1935—1,100 million Reichsmark; and for the budget period 1935 to 1936—2,500 million Reichsmark.

"The amount of deficits of the budget since 1928 increases after the budget 1935 to 1936 to 5 to 6 billion Reichsmark. This total deficit is already financed at the present time by short-term credits of the money market. It therefore reduces in advance the possibilities of utilization of the public market for the armament. The Reichsfinanzminister"—Minister of Finance—"correctly points out at the defense of the budget:

" 'As a permanent yearly deficit is an impossibility, as we cannot figure with security increased tax revenues in an amount balancing the deficit and any other previous debits, as on the other hand a balanced budget is the only secure basis for the impending great task of military policy,' "—I interpolate that evidently the Defendant Schacht knew about the impending great military task to be faced by Germany.—

" 'for all these reasons we have to put in motion a fundamental and conscious budget policy, which solves the problem of armament financing by organic and planned reduction of other expenditures, not only from the point of receipt, but also from the point of expenditure, that is, by saving.'

"How urgent this question is, can be deduced from the following, that very many tasks have been undertaken by the State and Party"—it isn't ever just the State; it is the State and the Party—"and are now in process, all of which are not covered by the budget, but from contributions and credits, which have to be raised by industry in addition to the regular taxes. The existence of various budgets side by side, which serve more or less public tasks, is the greatest impediment for gaining a clear view of the possibilities of financing the armaments. A large number of ministries and

various branches of the Party have their own budgets, and for this reason have possibilities of incomes and expenses, though based on the sovereignty of finance of the State, but not subject to the control of the Finanzminister"—Minister of Finance—"and therefore also not subject to the control of the Cabinet. Just as in the sphere of politics the much too far-reaching delegation of legislative powers to individuals brought about various states within the State, exactly in the same way the condition of various branches of State and Party, working side by side and against each other, has a devastating effect on the possibility of finance. If, in this territory, concentration and unified control is not introduced very soon, the solution of the already impossible task of armament finance is endangered.

"We have the following tasks:

"(1) A deputy is entrusted with, I suppose, finding all sources and revenues, which have origin in contributions to the Federal Government, to the State and Party, and in profits of public and Party enterprises.

"(2) Furthermore experts entrusted by the Führer have to examine how these amounts were used and which of these amounts in the future can be withdrawn from their previous purpose.

"(3) The same experts have to examine the investments of all public and Party organizations, to what extent this property can be used for the purpose of armament financing.

"(4) The federal Ministry of Finances is to be entrusted to examine the possibilities of increased revenues by way of new taxes or the increasing of existing taxes.

"The up-to-date financing of armaments by the Reichsbank, under existing political conditions, was a necessity, and the political success proved the correctness of this action. The other possibilities of armament financing have to be started now under any circumstance. For this purpose all absolutely nonessential expenditures for other purposes must not take place, and the total financial strength of Germany, limited as it is, has to be concentrated for the one purpose of armament financing. Whether the problem of financing as outlined in this program succeeds remains to be seen, but without such concentration it will fail with absolute certainty."

Being sort of a hand in finance myself, I can feel some sympathy with the Defendant Schacht as he was wrestling with these problems.

THE PRESIDENT: Would that be a convenient time to adjourn for 10 minutes?

MR. ALDERMAN: Yes.

[A recess was taken.]

MR. ALDERMAN: 21 May 1935 was a very important date in the Nazi calendar. As I have already indicated, it was on that date that they passed the secret Reich Defense Law, which is our Document 2261-PS. The secrecy of their armament operations had already reached the point beyond which they could no longer maintain successful camouflage and, since their program called for still further expansion, they made a unilateral renunciation of the armament provisions of the Versailles Treaty on the same date, 21 May 1935.

I refer to Hitler's speech to the Reichstag on 21 May 1935; our Document Number 2288-PS. We have here the original volume of the *Völkische Beobachter* (the "Popular Observer", I suppose, is the correct translation), Volume 48, 1935, 122-151, May, and the date 22 May 1935, which gave his speech under the heading (if I may translate, perhaps): "The Führer Notifies the World of the Way to Real Peace."

I offer that part of that volume identified as our Number 2288-PS, as Exhibit USA-38, and from that I shall read, beginning with the fifth paragraph in the English translation. I am sorry, I said the fifth paragraph—this indicates on Page 3. It is after he discusses some general conclusions and then there is a paragraph numbered 1, that says:

"1. The German Reich Government refuses to adhere to the Geneva Resolution of 17 March....

"The Treaty of Versailles was not broken by Germany unilaterally, but the well-known paragraphs of the Dictate of Versailles were violated, and consequently invalidated by those powers who could not make up their minds to follow the disarmament requested of Germany with their own disarmament as agreed upon by the Treaty.

"2. Because the other powers did not live up to their obligations under the disarmament program, the Government of the German Reich no longer considers itself bound to those articles, which are nothing but a discrimination of the German nation"—I suppose "against the German nation"—"for an unlimited period of time, since through them, Germany is being nailed down in a unilateral manner, contrary to the spirit of the agreement."

If the Tribunal please, needless to say, when I cite Adolf Hitler, I don't necessarily vouch for the absolute truth of everything that he presents. This is a public speech he made before the world, and it is for the Tribunal to judge whether he is presenting a pretext or whether he is presenting the truth.

In conjunction with other phases of planning and preparation for aggressive war, there were various programs for direct and indirect training of a military nature. This included not only the training of military personnel, but also the establishment and training of other para-military organizations, such as the police force, which could be, and were absorbed by, the Army.

These are shown in other parts of the case presented by the Prosecution. However, the extent of this program for military training is indicated by Hitler's boast of the expenditure of 90 billion Reichsmark during the period of 1933 to 1939 in the building up of the Armed Forces.

I have another volume of the *Völkischer Beobachter,* Volume 52, 1939—I think the issue of 2 and 3 September 1939—which I offer in evidence as Exhibit USA-39; and there appears a speech by Adolf Hitler, with his picture, under the heading which, if I may be permitted to try to translate, reads: "The Führer Announces the Battle for the Justice and Security of the Reich."

That is a speech, if the Court please, by Adolf Hitler, on 1 September 1939, the date of the attack on Poland, identified by our number 2322-PS, and I read from the bottom of Page 3, the last paragraph starting on the page:

> "For more than 6 years now, I have been engaged in building up the German Armed Forces. During this period more than 90 billion Reichsmark were spent building up the Wehrmacht. Today, ours are the best-equipped armed forces in the world, and they are superior to those of 1914. My confidence in them can never be shaken."

The secret nature of this training program and the fact of its early development is illustrated by a reference to the secret training of flying personnel, back in 1932, as well as the early plans to build a military air force. A report was sent to the Defendant Hess in a letter from one Schickedantz to the Defendant Rosenberg for delivery to Hess. I suppose that Schickedantz was very anxious that no one but Hess should get this letter, and therefore sent it to Rosenberg for personal delivery.

This document points out that the civilian pilots should be so organized as to enable their transfer into the military air force organization.

This letter is our Document 1143-PS, dated 20 October 1932, and I now offer it in evidence as U. S. Exhibit 40. It starts: "Lieber Alfred" (referring to Alfred Rosenberg), and is signed: "Mit bestem Gruss, Dein Amo." Amo, I think, was the first name of Schickedantz.

"Dear Alfred: I am sending you enclosed a communication from the RWM forwarded to me by our confidential man" —Vertrauensmann—"which indeed is very interesting. I believe we will have to take some steps so that the matter will not be procured secretly for the Stahlhelm. This report is not known to anybody else. I intentionally did not inform even our long friend."

I suppose that means "our tall friend." I may interpolate that the Defendant Rosenberg, in an interrogation on 5 October 1945, identified this "big friend" or "tall friend" as being one Von Alvensleben.

"I am enclosing an additional copy for Hess, and ask you to transmit the letter to Hess by messenger, as I do not want to write a letter to Hess for fear that it might be read somewhere. Mit bestem Gruss, Dein Amo."

Then enclosed with that is "Air Force Organization":

"Purpose: Preparation of material and training of personnel to provide for the case of the armament of the Air Force.

"Entire management as a civilian organization will be transferred to Colonel Von Willberg, at present Commander of Breslau, who, retaining his position in the Reichswehr, is going on leave of absence.

"(a) Organizing the pilots of civilian air-lines in such a way as to enable their transfer to the air force organization.

"(b) Prospects to train crews for military flying. Training to be done within the organization for military flying of the Stahlhelm"—I believe that means the "steel helmet"— "which is being turned over to Colonel Hänel, retired.

"All existing organizations for sport-flying are to be used for military flying. Directions on kinds and tasks of military flying will be issued by this Stahlhelm directorate. The Stahlhelm organization will pay the military pilots 50 marks per hour flight. These are due to the owner of the plane in case he himself carries out the flight. They are to be divided in case of non-owners of the plane, between flight organization, proprietor, and crew, in the proportion of 10-20-20 . . . Military flying is now paid better than flying for advertisement (40). We therefore have to expect that most proprietors

of planes or flying associations will go over to the Stahlhelm organization. It must be achieved that equal conditions will be granted by the RWM, also the NSDAP organization."

The program of rearmament and the objectives of circumventing and breaching the Versailles Treaty are forcefully shown by a number of Navy documents, showing the participation and cooperation of the German Navy in this rearmament program, secret at first.

When they deemed it safe to say so, they openly acknowledged that it had always been their objective to break Versailles.

In 1937 the Navy High Command published a secret book entitled *The Fight of the Navy Against Versailles, 1919 to 1935.* The preface refers to the fight of the Navy against the unbearable regulations of the Peace Treaty of Versailles. The table of contents includes a variety of Navy activities, such as saving of coastal guns from destruction as required by Versailles; independent armament measures behind the back of the Government and behind the back of the legislative bodies; resurrection of the U-boat arm; economic rearmament and camouflage rearmament from 1933 to the freedom from the restrictions in 1935.

This document points out the significant effect of the seizure of power by the Nazis in 1933 on increasing the size and determining the nature of the rearmament program. It also refers to the far-reaching independence in the building and development of the Navy, which was only hampered in so far as concealment of rearmament had to be considered in compliance with the Versailles Treaty.

With the restoration of what was called the military sovereignty of the Reich in 1935 and the reoccupation of the demilitarized zone of the Rhineland, the external camouflage of rearmament was eliminated.

We have, if the Court please, a photostat of the German printed book to which I have referred, entitled *Der Kampf der Marine gegen Versailles* (The Fight of the Navy against Versailles) *1919 to 1935,* written by Sea Captain Schüssler. It has the symbol of the Nazi Party with the swastika in the spread eagle on the cover sheet, and it is headed "*Secret*", underscored. It is our Document C-156. It is a book of 76 pages of text, followed by index lists and charts. I offer it in evidence as Exhibit USA-41. I may say that the Defendant Räeder identified this book in a recent interrogation and explained that the Navy tried to fulfill the letter of the Versailles Treaty and at the same time to make progress in naval development. I should like to read from this book, if the Court please, the preface and one or two other portions of the book:

"The object and aim of this memorandum, under the heading 'Preface', is to draw a technically reliable picture based on documentary records and the evidence of those who took part in the fight of the Navy against the unbearable regulations of the Peace Treaty of Versailles. It shows that the Reich Navy, after the liberating activities of the Free Corps and of Scapa Flow, did not rest but found ways and means to lay with unquenchable enthusiasm, in addition to the building up of the 15,000-man Navy, the basis for a greater development in the future, and so create, by the work of soldiers and technicians, the primary condition for a later rearmament. It must also distinguish more clearly the services of these men, who, without being known in wide circles, applied themselves with extraordinary zeal and responsibility in the service of the fight against the Peace Treaty. Thereby stimulated by the highest feeling of duty, they risked, particularly in the early days of their fight, themselves and their positions unrestrainedly in the partially self-ordained tasks. This compilation makes it clearer, however, that even such ideal and ambitious plans can be realized only to a small degree if the concentrated and united strength of the whole people is not behind the courageous activity of the soldier. Only when the Führer had created the second and even more important condition for an effective rearmament in the coordination of the whole nation and in the fusion of the political, financial, and spiritual power, could the work of the soldier find its fulfillment. The framework of this Peace Treaty, the most shameful known in world history, collapsed under the driving power of this united will.

"Signed, the Compiler."

Now I wish to invite the Court's attention merely to the summary of contents because the chapter titles are sufficiently significant for my present purpose.

"I. Defensive actions against the execution of the Treaty of Versailles (from the end of the war to the occupation of the Ruhr, 1923).

"1. Saving of coastal guns from destruction.

"2. Removal of artillery equipment and ammunition, hand and machine weapons.

"3. Limitation of destruction in Helgoland.

"II. Independent armament measures behind the back of the Reich Government and of the legislative body (from 1923 to the Lohmann case in 1927).

"1. Attempt to increase the personnel strength of the Reich Navy.

"2. Contribution to the strengthening of patriotism among the people.

"3. Activities of Captain Lohmann.

I am ashamed to say, if the Court please, that I am not familiar with the story about Captain Lohmann.

"4. Preparation for the resurrection of the German U-boat arm.

"5. Building up of the Air Force.

"6. Attempt to strengthen our mine arm.

"7. Economic rearmament.

"8. Miscellaneous measures: a. The N. V. Aerogeodetic; b. Secret reconnaissance.

"III. Planned armament works countenanced by the Reich Government but behind the back of the legislative body from 1928 to the seizure of power in 1933.

"IV. Rearmament under the leadership of the Reich Government in camouflaged form (from 1933 to the freedom from restrictions, 1935)."

Now if the interpreter who has the original German volume will turn to Chapter IV, Page 75—"Aufrüstung"—Concealed rearmament under the leadership of the Government of the Reich (from 1933 until military freedom in 1935):

"The unification of the whole nation which was combined with the taking over of power on 30 January 1933 was of decisive influence on the size and shape of further rearmament.

"While the Reichsrat approached its dissolution and withdrew as a legislative body, the Reichstag assumed a composition which could only take a decisive attitude toward the rearmament of the Armed Forces. The Government took over the management of the rearmament program upon this foundation...."

Then a heading — "Development of the Armed Forces":

"This taking over of the management by the Reich Government developed for the Armed Forces in such a manner that the War Minister, General Von Blomberg, and through him the three branches of the Armed Forces; received far-reaching powers from the Reich Cabinet for the development of the Armed Forces. The whole organization of the Reich was included in this work. In view of these powers, the collaboration of the former inspecting body in the manage-

ment of the secret expenditure was from then on dispensed with. There remained only the inspecting duties of the accounting office of the German Reich."

Another heading — "Independence of the Commander-in-Chief of the Navy":

"The Commander-in-Chief of the Navy, Admiral Raeder, honorary doctor, had received thereby a far-reaching independence in the building and development of the Navy. This was only hampered in so far as the previous concealment of rearmament had to be continued in consideration of the Versailles Treaty. Besides the ordinary budget there remained the previous special budget, which was greatly increased in view of the considerable credit for the provision of labor, which was made available by the Reich. Wide powers in the handling of these credits were given to the Director of the Budget Department of the Navy, up to 1934 Commodore Schüssler, afterwards Commodore Foerste. These took into consideration the increased responsibility of the Chief of the Budget."

Another heading — "Declaration of Military Freedom":

"When the Führer, relying upon the strengthening of the Armed Forces executed in the meanwhile, announced the restoration of the military sovereignty of the German Reich, the last-mentioned limitation on rearmament works, namely, the external camouflage, was eliminated. Freed from all the shackles which have hampered our ability to move freely on and under water, on land, and in the air, for one and a half decades, and carried by the newly-awakened fighting spirit of the whole nation, the Armed Forces, and as a part of it, the Navy, can lead with full strength towards its completion, the rearmament already under way with the goal of securing for the Reich its rightful position in the world."

If the Tribunal please, at this moment I have a new problem about proof which I believe we have not discussed. I have in my hand an English translation of an interrogation of the Defendant Erich Raeder. Of course he knows he was interrogated; he knows what he said. I don't believe we have furnished copies of this interrogation to defendants' counsel. I don't know whether under the circumstances I am at liberty to read from it or not. If I do read from it I suggest that the defendants' counsel will all get the complete text of it—I mean of what I read into the transcript.

THE PRESIDENT: Has the counsel for the Defendant Raeder any objection to this interrogation being read?

DR. SIEMERS: As far as I have understood the proceedings to date, I believe that it is a question of a procedure in which either proof by way of documents or proof by way of witnesses will be furnished. I am surprised that the Prosecution wishes to furnish proof by way of records of interrogations, taken at a time when the Defense was not present. I should be obliged to the Court if I could be told whether, in principle, I, as a defense counsel, may resort to producing evidence in this form, i. e. present documents of the interrogation of witnesses; that is to say, documents in which I myself interrogated witnesses the same as the Prosecution without putting witnesses on the stand.

THE PRESIDENT: The Tribunal thinks that if interrogations of defendants are to be used, copies of such interrogations should be furnished to defendant's counsel beforehand. The question which the Tribunal wished to ask you was whether on this occasion you objected to this interrogation being used without such a copy having been furnished to you. With regard to your observation as to your own rights with reference to interrogating your defendants, the Tribunal considers that you must call them as witnesses upon the witness stand and cannot interrogate them and put in the interrogations. The question for you now is whether you object to this interrogation being laid before the Tribunal at this stage.

DR. SIEMERS: I should like first of all to have an opportunity of seeing every record before it is submitted in Court. Only then shall I be able to decide whether interrogations can be read, the contents of which I as a defense counsel am not familiar with.

THE PRESIDENT: Very well, the Tribunal will adjourn now and it anticipates that the interrogation can be handed to you during the adjournment and then can be used afterwards.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

MR. JUSTICE JACKSON: May it please the Tribunal. I should like to ask the Tribunal to note the presence and appearance, on behalf of the Union of Soviet Socialist Republics, of Mr. A. I. Vishinsky of the Foreign Office, and General K. P. Gorshenin, Chief Prosecutor of the Soviet Republic who has been able to join us in the Prosecution only now.

THE PRESIDENT: The Tribunal notes what Mr. Justice Jackson has said, and observes that Mr. Vishinsky has taken his seat with the Soviet Delegation of Chief Prosecutors.

DR. SIEMERS: In the meanwhile during the lunch hour I have seen the minutes. I should like to observe that I don't think it is very agreeable that the Prosecution should not depart from their point that the Defense should only receive the documents during the proceedings, or just before the proceedings, or at times, even after the proceedings. I should be grateful if the Prosecution could see to it in the future that we are informed in good time.

Yesterday a list of the documents which were to be presented today was made in our room, number 54. I find that the documents presented today are not included in yesterday's list. You will understand that the task of the Defense is thereby rendered comparatively difficult. On principle, I cannot in my statement of today, give my agreement to the reading of minutes of interrogations. In order to facilitate matters, I should like to follow the Court's suggestion, and declare that I am agreeable to the minutes presented here being read. I request, however—and I believe I have already been assured by the Prosecution to that effect—that only the part be read which refers to Document C-156, as I had no time to discuss the remaining points with the defendants.

As to the remaining points, five other documents are cited. Moreover I request that the part which refers to the book by Kapitän zur See Schüssler, should be read in full, and I believe that the prosecutor agrees with this.

THE PRESIDENT: I understood from the counsel for Raeder that you were substantially in agreement as to what parts of this interrogation you should read. Is that right, Mr. Alderman?

MR. ALDERMAN: If I understood the counsel correctly, he asked that I read the entire part of the interrogation which deals with Document C-156, but I understood that he did not agree for me to read other parts that referred to other documents. I handed counsel the original of my copy of the interrogation before the lunch hour, and when he returned it to me after the lunch hour,

I substituted in his hands a carbon copy. I didn't quite understand his statement about documents being introduced which hadn't been furnished to the defendant. We did file the document book.

THE PRESIDENT: Is this document in the document book?

MR. ALDERMAN: My understanding is that the document book contains all the documents except these interrogations. They did not contain the interrogation.

THE PRESIDENT: Then he is right in saying that.

MR. ALDERMAN: He is right as to the interrogation, yes.

THE PRESIDENT: Are you in agreement with him then, that you can read what you want to read now, and that it is not necessary for you to read the parts to which he objects.

MR. ALDERMAN: I think so. I understand he objects to my reading anything other than the part concerned with C-156. I would anticipate that he might be willing for me to read the other parts tomorrow.

This deals with the book which I offered in evidence this morning, Document C-156, Exhibit USA-41. The Defendant Raeder identified that book, and explained that the Navy tried to fulfill the letter of the Versailles Treaty and at the same time make progress in naval development. I refer to the interrogation of the Defendant Raeder at the part we had under discussion:

"Q. I have here a Document C-156, which is a photostatic copy of a work prepared by the High Command of the Navy and covers the struggle of the Navy against the Versailles Treaty from 1919 to 1935. I ask you initially whether you are familiar with the work.

"A. I know this book. I read it once when it was edited.

"Q. Was that an official publication of the German Navy?

"A. This Captain Schüssler (indicating the author) was a commander in the Admiralty. Published by the OKM, it was an idea of this officer to put all these things together.

"Q. Do you recall the circumstances under which the authorization to prepare such a work was given to him?

"A. I think he told me that he would write such a book as he tells here in the foreword.

"Q. And in the preparation of this work he had access to the official Navy files and based his work on the items contained therein?

"A. Yes, I think so. He would have spoken with other persons, and he would have had the files which were necessary.

"Q. Do you know whether, before the work was published, a draft of it was circulated among the officers in the Admiralty for comment?

"A. No, I don't think so. Not before it was published. I saw it only when it was published.

"Q. Was it circulated freely after its publication?

"A. It was a secret object. I think all upper commands in the Navy had knowledge of it.

"Q. It was not circulated outside of Navy circles?

"A. No.

"Q. What then is your opinion concerning the comments contained in the work, regarding the circumventing of the provisions of Versailles?

"A. I don't remember very exactly what is in here. I can only remember that the Navy had always the object to fulfill the word of the Versailles Treaty, but in order to have some advantages. But the flying men were exercised 1 year before they went into the Navy. Quite young men. So that the word of the Treaty of Versailles was filled. They did not belong to the Navy, as long as they were exercised in flying, and the submarines were developed, but not in Germany and not in the Navy, but in Holland. There was a civil bureau, and in Spain there was an industrialist; in Finland, too, and they were built only much later, when we began to act with the English Government about the Treaty of 35 to 100, because we could see that then the Treaty of Versailles would be destroyed by such a treaty with England, and so, in order to keep the word of Versailles, we tried to fulfill the word of Versailles, but we tried to have advantages.

"Q. Would a fair statement be that the Navy High Command was interested in avoiding the limiting provisions of the Treaty of Versailles regarding personnel and the limits of armaments, but would attempt to fulfill the letter of the Treaty, although actually avoiding it?

"A. That was our endeavor."

MR. ALDERMAN: Now the rest of this is the portion that counsel for the defendant asked me to read:

"Q. Why was such a policy adopted?

"A. We were much menaced in the first years after the first war by the danger that the Poles would attack East Prussia, and so we tried to strengthen a little our very, very weak forces in this way; and so all our efforts were directed to

the aim of having a little more strength against the Poles should they attack us. It was nonsense to think of attacking Poland in this stage by the Navy. A second aim was to have some defense against the entering of French forces into the Ostsee (East Sea), because we knew that the French had the intention to sustain the Poles. Their ships came into the Ostsee, Gdynia, and so the Navy was a defense against an attack of Poland and against the entrance of French ships into the East Sea; quite defensive aims.

"Q. When did this fear of an attack from Poland first show itself in official circles in Germany, would you say?

"A. In all the first years. They took Vilna; in the same minute we thought they would come to East Prussia. I don't know exactly the year, because those judgments were the judgments of the German Government Ministers, the Army and Navy Ministers—Gröner and Noske.

"Q. Then those views, in your opinion, were generally held and existed perhaps as early as 1919-1920, after the end of the first World War?

"A. Oh, but the whole situation was very, very uncertain, and about those years in the beginning I cannot give you a very exact picture, because I was then 2 years in the Navy Archives to write a book about the War and the fighting capacity of cruisers. For 2 years I was not with those things."

MR. ALDERMAN: Likewise the same kind of planning and purposes are reflected in the table of contents of a history of the German Navy, 1919 to 1939, found in captured official files of the German Navy. Although a copy of the book has not been found by us, the project was to have been written by Oberst Scherff, Hitler's personal military historian. We have found the table of contents; it refers by numbers to groups of documents and notes of documents, which evidently were intended as the working materials for the basis of chapters, to be written in accordance with the table of contents. The titles in this table of contents clearly establish the Navy planning and preparation to get the Versailles Treaty out of the way and to rebuild the naval strength necessary for aggressive war.

We have here the original captured document which is, as I say, the German typewritten table of contents of this projected work, with a German cover, typewritten, entitled *Geschichte der Deutschen Marine, 1919-1939 (History of the German Navy, 1919-1939).* We identify it as our series C-17 and I offer it in evidence as Ex-

hibit USA-42. This table of contents includes such general headings—perhaps I had better read some of the actual headings:

"Part A, 1919—The Year of Transition. Chapter VII: First efforts to circumvent the Versailles Treaty and to limit its effects.

"(a) Demilitarization of the Administration, incorporation of naval offices in Civil Ministries *et cetera*. (For example: Incorporation of greater sections of the German maritime observation station and the sea-mark system in Helgoland and Kiel, of the Ems-Jade Canal *et cetera* into the Reich Transport Ministry up to 1934: Noske's proposal of 11. 8. 1919 to incorporate the Naval Construction Department in the Technical High School, Berlin; formation of the Naval Arsenal Kiel.)" —With a reference to a group of documents numbered 75.—

"(b) The saving from destruction of coastal fortifications and guns.

"(1) North Sea (strengthening of fortifications with new batteries and modern guns between the signing and the taking effect of the Versailles Treaty; dealings with the Control Commission—information, drawings, visits of inspection, result of efforts." — referring to the group of documents numbered 85.—

"(2) Baltic (taking over by the Navy of fortresses Pillau and Swinemünde; salvage for the Army of 185 movable guns and mortars there.)"—I may interpolate that when the British offer in evidence the Treaty of Versailles, you will see the detailed limitations which this document indicates an effort to avoid.—

"(3) The beginnings of coastal air defense.

"Part B, 1920-1924—The Organizational New Order. Chapter V: The Navy. Fulfillment and avoidance of the Versailles Treaty. Foreign countries.

"(a) The Interallied Control Commissions.

"(b) Defense measures against the fulfillment of the Versailles Treaty and independent arming behind the back of the Reich Government and the legislative bodies.

"(1) Dispersal of artillery gear and munitions, of hand and automatic weapons.

"(2) Limitation of demolition work in Helgoland.

"(3) Attempt to strengthen personnel of the Navy, from 1923.

"(4) The activities of Captain Lohmann (founding of numerous associations at home and abroad, participations, for-

mation of 'sports' unions and clubs, interesting the film industry in naval recruitment).

"(5) Preparation for re-establishing the German U-boat arm since 1920 (projects and deliveries for Japan, Holland, Turkey, Argentina, and Finland; torpedo testing).

"(6) Participation in the preparation for building of the Luftwaffe (preservation of airdromes, aircraft construction, teaching of courses, instruction of midshipmen in anti-air-raid defense, training of pilots).

"(7) Attempt to strengthen the mining branch.

"Part C (1925-1932—Replacement of tonnage). Chapter IV: The Navy, the Versailles Treaty, foreign countries.

"(a) The activities of the Interallied Control Commission (up to 31. 1. 27; discontinuance of the activity of the Naval Peace Commission).

"(b) Independent armament measures behind the back of the Reich Government and legislative bodies up to the Lohmann case.

"(1) The activities of Captain Lohmann (continuation) their significance as a foundation for the rapid reconstruction work from 1935.

"(2) Preparation for the restrengthening of the German U-boat arm from 1925 (continuation), the merit of Lohmann in connection with the preparation for rapid construction in 1925, relationship to Spain, Argentina, Turkey; the first post-war U-boat construction of the German Navy in Spain since 1927 . . . 250-ton specimen in Finland, preparation for rapid assembly; electric torpedo; training of U-boat personnel abroad in Spain and Finland. Formation of U-boat school in 1932 disguised as an anti-U-boat school.

"(3) Participation in the preparation for the reconstruction of the Luftwaffe (continuation). Preparation for a Naval Air Arm, Finance Aircraft Company Severa, later Luftdienst" —or Air Service—"GMBH; Naval Flying School Warnemünde; air station list, training of sea cadet candidates, military tactical questions 'Air Defense Journeys,' technical development, experimental station planning, trials, flying boat development Do X *et cetera,* catapult aircraft, arming, engines, ground organization, aircraft torpedoes, the Deutschland flight 1925, and the seaplane race 1926.

"(4) Economic rearmament ('The Tebeg'—Technical Advice and Supply Company as a disguised naval office abroad for

investigating the position of raw materials for industrial capacity and other war economic questions).

"(5) Various measures (the NV Aerogeodetic Company—secret investigations).

"(c) Planned armament work with the tacit approval of the Reich Government, but behind the backs of the legislative bodies (1928 to the taking over of power).

"(1) The effect of the Lohmann case on the secret preparations; winding up of works which could not be advocated; resumption and carrying on of other work.

"(2) Finance question ('Black Funds' and the 'Special Budget').

"(3) The Labor Committee and its objectives.

"(d) The question of Marine attachés (the continuation under disguise; open reappointment 1932-1933).

"(e) The question of disarmament of the fleet abroad and in Germany (the Geneva Disarmament Conference 1927; the London Naval Treaty of 1930; the Anglo-French-Italian Agreement 1931; the League of Nations Disarmament Conference 1932).

"Part D (1933-1939—The German Navy during the military freedom period)."

—which goes beyond the period with which I am at the moment dealing. A glance at the chapter headings following that will indicate the scope of this proposed work. Whether the history was ever actually written by Scherff, I do not know.

I would like to call attention just to the first two or three headings, under this "Part D—The German Navy during the military freedom period":

"I. National Socialism and the question of the fleet and of prestige at sea.

II. Incorporation of the Navy in the National Socialist State."

—The main heading III in the middle of the page—"The Rearmament of the Navy under the direction of the Reich Government in a disguised way."

The policy development of the Navy is also reflected from the financial side. The planned organization of the Navy budget for armament measures was based on a co-ordination of military developments and political objectives. Military political development was accelerated after the withdrawal from the League of Nations.

I have here, if the Court please, a captured document, in German, headed "Der Chef der Marineleitung, Berlin, 12 May 1934," and marked in large blue printing "Geheime Kommandosache"

(Secret Commando Matter), which is identified as our C-153. It has the facsimile signature of Raeder at the end. I assume it is the facsimile; it may have been written with a stylus on a stencil; I can't tell. I offer it in evidence as Exhibit USA-43. It is headed with the title: "Armament Plan (R. P.) for the 3rd Armament Phase." This document of 12 May 1934 speaks of war tasks, war and operational plans, armament targets, *et cetera,* and shows that it was distributed to many of the High Command of the Navy. It shows that a primary objective was readiness for a war without any alert period.

I quote from the third numbered paragraph:

"The planned organization of armament measures is necessary for the realization of this target; this again requires a co-ordinated and planned expenditure in peace time. This organization of financial measures over a number of years, according to the military viewpoint, is found in the armament program and provides: (a) for the military leader a sound basis for his operational considerations, and (b) for the political leader a clear picture of what may be achieved with the military means available at a given time."

One other sentence from Paragraph 7 of that document:

"All theoretical and practical R-preparations"—I assume that means armament preparations—"are to be drawn up with a primary view to readiness for a war *without any alert period.*"—And "without any alert period" is underscored in the original.

The conspiratorial nature of these Nazi plans and preparations long before the outbreak of hostilities is illustrated in many other ways. Thus, in 1934, Hitler instructed Raeder to keep secret the U-boat construction program; also the actual displacement and speed of certain ships. Work on U-boats had been going on, as already indicated, in Holland and Spain.

The Nazi theory was rather clever on that. The Versailles Treaty forbade rearming by the Germans in Germany, but they said it didn't forbid them to rearm in Holland, Spain, and Finland.

Secrecy was equally important then because of the pending naval negotiations with England. We have a captured document, which is a manuscript in German script, of a conversation between the Defendant Raeder and Adolf Hitler in June 1934. It is not signed by the Defendant Raeder. I might ask his counsel if he objects to my stating that the Defendant Raeder, in an interrogation on 8 November 1945, admitted that this was a record of this conversation and that it was in his handwriting, though he did not sign his name at the end.

That document is identified in our series as C-189, and I offer it in evidence as Exhibit USA-44.

It is headed: "Conversation with the Führer in June 1934 on the occasion of the resignation of the Commanding Officer of the 'Karlsruhe.'"

"1. Report by the C-in-C Navy concerning increased displacement of D. and E. (defensive weapons).

"Führer's instructions: No mention must be made of a displacement of 25-26,000 tons, but only of improved 10,000-ton ships. Also, the speed over 26 nautical miles may not be stated.

"2. C-in-C Navy expresses the opinion that later on, the Fleet must anyhow be developed to oppose England, that therefore from 1936 onwards, the large ships must be armed with 35-centimeter guns (like the King George class.)

"3. The Führer demands to keep the construction of the U-boats secret, in consideration of the Saar plebiscite."

In order to continue the vital increase of the Navy, as planned, the Navy needed more funds than it had available; so Hitler proposed to put funds of the Labor Front at the disposal of the Navy.

We have another Raeder memorandum of a conversation between Raeder and Hitler on 2 November 1934. Of this I have a photostatic copy of the German typed memorandum, identified as our C-190. This one, again, is not signed, but it was found in Raeder's personal file and I think he will not deny that it is his memorandum. I offer it in evidence as Exhibit USA-45.

It is headed: "Conversation with the Führer on 2. 11. 34 at the time of the announcement by the Commanding Officer of the 'Emden'.

"1. When I mentioned that the total funds to be made available for the Armed Forces for 1935 would presumably represent only a fraction of the required sum, and that therefore it was possible that the Navy might be hindered in its plans, he replied that he did not think the funds would be greatly decreased. He considered it necessary that the Navy be speedily increased by 1938 with the deadlines mentioned. In case of need he will get Dr. Ley to put 120 to 150 million from the Labor Front at the disposal of the Navy, as the money would still benefit the workers. Later, in a conversation with Minister Göring and myself, he went on to say that he considered it vital that the Navy be increased as planned, as no war could be carried on if the Navy was not able to safeguard the ore imports from Scandinavia.

"2. Then, when I mentioned that it would be desirable to have six U-boats assembled at the time of the critical polit-

ical situation in the first quarter of 1935,"—that's the following year, foreseeing—"he stated that he would keep this point in mind, and tell me when the situation demanded that the assembling should commence."

Then, there is an apostrophe and a note at the bottom:

"The order was not sent out. The first boats were launched in the middle of June '35 according to plan."

The development of the armament industry by the use of foreign markets was a program encouraged by the Navy, so that this industry would be able to supply the requirements of the Navy in case of need.

We have an original German document, again headed "Geheime Kommandosache" (secret commando matter)—a directive of 31 January 1933 by the Defendant Raeder for the German industry to support the armament of the Navy.

It is identified in our series as C-29. I offer it in evidence as Exhibit USA-46:

"Top Secret.

"General directions for support given by the German Navy to the German armament industry."

"The effects of the present economic depression have led here and there to the conclusion that there are no prospects of an active participation of the German armament industry abroad, even if the Versailles terms are no longer kept. There is no profit in it and it is therefore not worth promoting. Furthermore, the view has been taken that the increasing 'self-sufficiency' would in any case make such participation superfluous.

"However obvious these opinions may seem, formed because of the situation as it is today, I am nevertheless forced to make the following contradictory corrective points:

"a) The economic crisis and its present effects must perforce be overcome sooner or later. Though equality of rights in war politics is not fully recognized today, it will, by the assimilation of weapons, be achieved at some period, at least to a certain extent.

"b) The consequent estimation of the duties of the German armament industry lies mainly in the military-political sphere. It is impossible for this industry to satisfy, militarily and economically, the growing demands made of it by limiting the deliveries to our Armed Forces. Its capacity must therefore be increased by the delivery of supplies to foreign countries over and above our own requirements.

"c) Almost every country is working to the same end today, even those which, unlike Germany, are not tied down by restrictions. Britain, France, North America, Japan, and especially Italy, are making supreme efforts to ensure markets for their armament industries. The use of their diplomatic representations, of the propaganda voyages of their most modern ships and vessels, of sending missions and also of the guaranteeing of loans and insurance against deficits, are not merely to gain commercially advantageous orders for their armament industries, but first and foremost, to expand their output from the point of view of military policy.

"d) It is just when the efforts to do away with the restrictions imposed on us have succeeded, that the German Navy has an ever increasing and really vital interest in furthering the German armament industry and preparing the way for it in every direction in the competitive battle against the rest of the world.

"e) If, however, the German armament industry is to be able to compete in foreign countries, it must inspire the confidence of its purchasers. The condition for this is that secrecy for our own ends be not carried too far. The amount of material to be kept secret under all circumstances, in the interest of the defense of the country, is comparatively small. I would like to issue a warning against the assumption that at the present stage of technical development in foreign industrial states, a problem of vital military importance which we perhaps have solved, has not been solved there. Solutions arrived at today, which may become known, if divulged to a third person by naturally always possible indiscretion, have often been already superseded by new better solutions on our part, even at that time or at any rate after the copy has been made. It is of greater importance that we should be technically well to the fore in any really fundamental matters, than that less important points should be kept secret unnecessarily and excessively.

"f) To conclude: I attach particular importance to guaranteeing the continuous support of the industry concerned by the Navy, even after the present restrictions have been relaxed. If the purchasers are not made confident that something better is being offered them, the industry will not be able to stand up to the competitive battle and therefore will not be able to supply the requirements of the German Navy in case of need."

This Navy program of surreptitious rearmament, in violation of the Treaty obligations, starting even before the Nazis came into power, is illustrated by a 1932 order of the Defendant Raeder, Chief of the Naval Command, addressed to the main Naval Command, regarding the concealed construction of torpedo-tubes for S-boats. He ordered that torpedo-tubes be removed and stored in the Naval Arsenal, but be kept ready for immediate refitting. By using only the permitted number—that is, permitted under the Treaty—at a given time, and storing them after satisfactory testing, the actual number of operationally effective S-boats was constantly increased.

We have this German order, with the facsimile signature of Raeder, with the heading: "Der Chef der Marine Leitung, Berlin, 10 February 1932." Our series number is C-141. I offer it in evidence as Exhibit USA-47, the order for concealed armament of S-boats. That is C-141. I read from the first paragraph of the text:

"In view of our Treaty obligations and the Disarmament Conference, steps must be taken to prevent the first S-boat half-flotilla, which in a few months will consist of exactly similar, newly built S-boats, from appearing openly as a formation of torpedo-carrying boats"—the German word being "Torpedoträger"—"and it is not intended to count these S-boats against the number of torpedo-carrying boats allowed to us.

"I therefore order:

"1. S2-S5 will be commissioned in the shipyard Lürssen, Vegesack, without armament and will be fitted with easily removable cover-sheetmetal on the spaces necessary for torpedo-tubes. The same will be arranged by T.M.I."—a translator's note at the bottom says with reference to T.M.I. (Inspectorate of Torpedos and Mining)—"In agreement with the Naval Arsenal, for the Boat S-1 which will dismantle its torpedo-tubes on completion of the practice shooting, for fitting on another boat.

"2. The torpedo-tubes of all S-boats will be stored in the Naval Arsenal ready for immediate fitting. During the trial runs the torpedo-tubes will be taken on board one after the other for a short time to be fitted and for practice shooting, so that only one boat at a time carries torpedo armament. For public consumption this boat will be in service for the purpose of temporary trials by the T.V.A."

—I suppose that is not the Tennessee Valley Authority; the translator's note calls it the Technical Research Establishment.—

"It should not anchor together with the other unarmed boats of the half-flotilla because of the obvious similarity of the type. The duration of firing, and consequently the length of time the torpedo-tubes, are aboard, is to be as short as possible.

"3. Fitting the torpedo-tubes on all S-boats is intended as soon as the situation of the political control allows it."

Interestingly enough, that memorandum by the Defendant Raeder, written in 1932, was talking about "as soon as the situation of the political control allows it." The seizure of power was the following year.

Along similar lines the Navy was also carrying on the concealed preparation of auxiliary cruisers, under the disguised designation of 'Transport Ships 0'. The preparations under this order were to be completed by 1 April 1935. At the very time of construction of these ships as commercial ships, plans were made for their conversion.

We have the original German document, again top secret, identified by our Number C-166, order from the Command Office of the Navy, dated 12 March 1934, and signed in draft by Groos. It has the seal of the Reichswehrministerium, Marineleitung, over the draft signature. I offer it in evidence as Exhibit USA-48. I think the Defendant Raeder will admit, or at least will not deny, that this is an official document.

"Subject: Preparation of auxiliary cruisers.

"It is intended to include in the Establishment Organization 35 (AG Aufstellungsgliederung) a certain number of auxiliary cruisers which are intended for use in operations in foreign waters.

"In order to disguise the intention and all the preparations, the ships will be referred to as 'Transport Ships 0'. It is requested that in future this designation only be used."

The short paragraph says: "The preparations are to be arranged so that they can be completed by 1. 4. 35."

Among official Navy files, OKM files, which we have, there are notes kept year by year, from 1927 to 1940, on the reconstruction of the German Navy, and in these notes are numerous examples of the Navy's activities and policies of which I should like to point out some illustrations.

One of these documents discloses that the displacement of the battleships "Scharnhorst-Gneisenau" and "F/G" — whatever that is — was actually greater than the tonnages which had been notified to the British under the Treaty. This document, our

C-23, I offer in evidence as Exhibit USA-49. That is a set really of three seperate documents joined together. I read from that document:

> "The true displacement of the battleships 'Scharnhorst-Gneisenau' and the 'F/G' exceeds by 20 percent, in both cases, the displacement reported to the British."

And then there is a table with reference to different ships, and two columns headed "Displacement by Type": one column "Actual Displacement" and the other column "Notified Displacement."

On the "Scharnhorst" the actual was 31,300 tons; the notified was 26,000 tons. On the "F"—actual 41,700 tons, the notified 35,000. On the "HI"—actual 56,200 tons, notified 46,850, and so down the list. I need not read them all.

On the second document in that group towards the end, Page 2 on the English version, is the statement:

> "In a clear cut program for the construction, the Führer and Reich Chancellor has set the Navy the task of carrying out the aims of his foreign policy."

The German Navy constantly planned and committed violations of armament limitation and with characteristic German thoroughness had prepared superficial explanations or pretexts to explain away these violations.

Following a conference with the chief of "A" section, an elaborate survey list was prepared and compiled, giving a careful list of the quantity and type of German naval armament and ammunition on hand under manufacture or construction, and in many instances proposed together with a statement of the justification or defense that might be used in those instances where the Versailles Treaty was violated or its allotment has been exceeded.

The list contained 30 items under "Material Measures" and 14 items under "Measures of Organization." The variety of details covered necessarily involved several sources within the Navy, which must have realized their significance. As I understand it, the "A" section was the military department of the Navy.

We have this very interesting document among the captured documents identified by our Number C-32. I offer it in evidence as Exhibit USA-50. It again is Geheime Kommandosache and it is headed "A Survey Report of German Naval Armament after Conference with Chief of 'A' Section", dated 9 September 1933, and captured among official German Navy files.

This is a long document, if the Tribunal please, but I should like to call attention to a few of the more interesting items.

There are three columns, one headed "Measure", one headed "Material Measures, Details," and the most interesting one is headed "Remarks." The remarks contain the pretext or justification for explaining away the violations of the Treaty. They are numbered, so I can conveniently refer to the numbers:

"Number 1. Exceeding the permitted number of mines."—Then figures are given. Remarks—"Further mines are in part ordered, in part being delivered."

"Number 2. Continuous storing of guns from the North Sea area for Baltic artillery batteries."—In the remarks column—"Justification: Necessity for overhauling. Cheaper repairs."

"Number 6. Laying gun-platforms in the Kiel area." Remarks: "The offense over and above that in Serial Number 3 lies in the fact that all fortifications are forbidden in the Kiel area. This justification will make it less severe; pure defense measures."

"Number 7. Exceeding the caliber permitted for coastal batteries." The explanation: "Possible justification is that, though the caliber is larger, the number of guns is less."

"Number 8. Arming of minesweepers. The reply to any remonstrance against this breach: the guns are taken from the Fleet reserve stores, have been temporarily installed only for training purposes. All nations arm their mine sweeping forces (equality of rights)."

—Here is one that is rather amusing—"Number 13. Exceeding the number of machine guns *et cetera*, permitted." Remarks: "Can be made light of."

"Number 18. Construction of U-boat parts." This remark is quite characteristic: "Difficult to detect. If necessary can be denied."

"Number 20. Arming of fishing vessels." Remarks: "For warning shots. Make little of it."—And so on throughout the list.

I think quite obviously that must have been used as a guide for negotiators who were attending the Disarmament Conference as to the position that they might take.

Now to Paragraph IV (F) 2 (b) of the Indictment: the allegation that "On 14 October 1933 they led Germany to leave the International Disarmament Conference and the League of Nations."

That is an historical fact of which I ask the Tribunal to take judicial notice. The Nazis took this opportunity to break away from the international negotiations and to take an aggressive position on an issue which would not be serious enough to provoke

reprisal from other countries. At the same time Germany attached so much importance to this action, that they considered the possibility of the application of sanctions by other countries. Anticipating the probable nature of such sanctions and the countries which might apply them, plans were made for military preparations for armed resistance on land, at sea, and in the air, in a directive from the Reichsminister for Defense Blomberg, to the Head of the Army High Command Fritsch, the Head of the Navy High Command Raeder, and the Reichsminister of Air Göring.

We have this captured document in our series C-140, which I offer in evidence as Exhibit USA-151. It is a directive dated 25 October 1933, 11 days after the withdrawal from the Disarmament Conference and the League of Nations.

"1) The enclosed directive gives the basis for preparations of the Armed Forces in the case of sanctions being applied against Germany.

"2) I request the Chiefs of the Army and Navy High Commands and the Reichsminister for Air to carry out the preparations in accordance with the following points:

"(a) Strictest secrecy. It is of the utmost importance that no facts become known to the outside world from which preparation for resistance against sanctions can be inferred or which is incompatible with Germany's existing obligations in the sphere of foreign policy regarding the demilitarized zone. If necessary, the preparations must take second place to this necessity."

I think that makes the point without further reading. One of the immediate consequences of the action was that following the withdrawal from the League of Nations, Germany's armament program was still further increased.

I introduced this morning document C-153, as Exhibit USA-43, so that is already in. From that, at this point, I wish to read Paragraph 5. That, as you recall, was a document dated 12 May 1934.

"5) Owing to the speed of military political development, since Germany quitted Geneva, and based on the progress of the Army, the new R-plan will only be drawn up for a period of 2 years. The third 'A' phase lasts accordingly from 1. 4. 34 to 31. 3. 36."

Then the next allegation of the Indictment, if the Tribunal please: "On 10 March 1935 the Defendant Göring announced that Germany was building a military air force."

That is an historical fact of which I ask the Court to take judicial notice, and I am quite certain that the Defendant Göring would not dispute it.

We have a copy of the German publication known as *Das Archiv*—the number of March 1935; and it is Page 1830 to which I refer, and I would offer that in evidence, identifying it as our number 2292-PS; I offer it as Exhibit USA-52. It is an announcement concerning the German Air Force:

"The Reich Minister for Aviation, General of the Airmen, Göring, in his talk with the special correspondent of the *Daily Mail*, Ward Price, expressed himself on the subject of the German Air Force.

"General Göring said:

" 'In the extension of our national defenses' "—Sicherheit—" 'it was necessary, as we repeatedly told the world, to take care of defense in the air. As far as that is concerned, I restricted myself to those measures absolutely necessary. The guiding line of my actions was, not the creation of an aggressive force which would threaten other nations, but merely the completion of a military aviation which would be strong enough to repel, at any time, attacks on Germany.' "

Then, at the end of that section of the article in *Das Archiv:*

"In conclusion, the correspondent asks whether the German Air Force will be capable of repelling attacks on Germany.

General Göring replied to that exactly as follows:

" 'The German Air Force is just as passionately permeated with the will to defend the Fatherland to the last as it is convinced, on the other hand, that it will never be employed to threaten the peace of other nations.' "

As I said, I believe, this morning, when we cite assurances of that kind from Nazi leaders, we take it that we are not foreclosed from showing that they had different intentions from those announced.

The next allegation of the Indictment is the promulgating of the law for compulsory military service, universal military service.

Having gone as far as they could on rearmament and the secret training of personnel, the next step necessary to the program for aggressive war was a large-scale increase in military strength. This could no longer be done under disguise and camouflage, and would have to be known to the world. Accordingly, on 16 March 1935, there was promulgated a law for universal military service, in violation of Article 173 of the Versailles Treaty.

I ask the Court to take judicial notice of that law as it appears in the *Reichsgesetzblatt,* which is the official compilation of laws, in the Title I of Volume I, yearly volume 1935, or Jahrgang, at

Page 369 and I think I need not offer the book or the law in evidence.

The text of the law itself is very brief and I might read that. It is right at the end of the article. I should refer to that as our Document Number 1654-PS, so as to identify it:

"In this spirit the German Reich Cabinet has today passed the following law:

"Law for the Organization of the Armed Forces of March 16, 1935.

"The Reich Cabinet has passed the following law which is herewith promulgated:

"Paragraph 1. Service in the Armed Forces is based upon compulsory military duty.

"Paragraph 2. In peace time, the German Army, including the police troops transferred to it, is organized into 12 corps and 36 divisions."—There is a typographical error in the English version of that. It says "16 divisions", but the original German says 36 divisions.—

"Paragraph 3. The Reich Minister of War is charged with the duty of submitting immediately to the Reich Ministry detailed laws on compulsory military duty."

Signed: "Berlin, 16 March 1935."

It is signed first by the Führer and Reich Chancellor Adolf Hitler, and then many other officials, including the following defendants in this case:

Von Neurath, Frick, Schacht, Göring, Hess, Frank.

Does the Court contemplate a short recess?

THE PRESIDENT: We will adjourn for 10 minutes.

[A recess was taken.]

COL. STOREY: If the Tribunal please, the Prosecution expects, on tomorrow, to offer in evidence some captured enemy moving pictures and in order to give Defense Counsel an opportunity to see them before they are offered in evidence—and in response to their request made to the Tribunal some time ago—the showing of these films for Defense Counsel will be held in this court room this evening at 8 o'clock, for the Defense Counsel.

THE PRESIDENT: Very well, Colonel Storey.

MR. ALDERMAN: May it please the Tribunal, I have reached now Paragraph IV, F, 2 (e) of the Indictment, which alleges:

"On 21 May 1935 they falsely announced to the world, with intent to deceive and allay fears of aggressive intentions, that they would respect the territorial limitations of the Versailles Treaty and comply with the Locarno Pact."

As a part of their program to weaken resistance in possible enemy states, the Nazis followed a policy of making false assurances, thereby tending to create confusion and a false sense of security. Thus on the same date on which Germany renounced the armament provisions of the Versailles Treaty, Hitler announced the intent of the German Government to respect the territorial limitations of Versailles and Locarno.

I offered in evidence this morning, as Exhibit USA-38, our Document 2288-PS, the pertinent volume of the issue of the *Völkischer Beobachter* of 21 May 1935, containing Hitler's speech in the Reichstag on that date. In that speech he said:

"Therefore, the Government of the German Reich shall absolutely respect all other articles pertaining to the cooperation" —Zusammenleben, really meaning the living together in harmony—"of the various nations, including territorial agreements. Revisions which will be unavoidable as time goes by it will carry out by way of a friendly understanding only.

"The Government of the German Reich has the intention not to sign any treaty which it believes not to be able to fulfill. However, it will live up to every treaty signed voluntarily even if it was composed before this Government took over. Therefore, it will in particular adhere to all the obligations under the Locarno Pact, as long as the other partners of the Pact also adhere to it."

For convenient reference, the territorial limitations in the Locarno and Versailles Treaties include the following: The Rhine Pact of Locarno, 16 October 1925, Article 1:

"The High Contracting Parties, collectively and severally, guarantee, in the manner provided in the following Articles: the maintenance of the territorial *status quo*, resulting from the frontiers between Germany and Belgium, and between Germany and France, and the inviolability of the said frontiers, as fixed by, or in pursuance of the Treaty of Peace, signed at Versailles, on June 28, 1919, and also the observance of the stipulations of Articles 42 and 43 of the said Treaty, concerning the demilitarized zone."

That has reference, of course, to the demilitarized zone of the Rhineland.

Then from the Versailles Treaty, 28 June 1919, Article 42:

"Germany is forbidden to maintain or construct any fortifications, either on the left bank of the Rhine or on the right bank, to the West of the line drawn 50 kilometers to the East of the Rhine.

"Article 43: In the area defined above, the maintenance and the assembly of armed forces, either permanently or temporarily and military maneuvers of any kind, as well as the upkeep of all permanent works for mobilization, are in the same way forbidden."

The next allegation of the Indictment (f):

"On 7 March 1936, they reoccupied and fortified the Rhineland, in violation of the Treaty of Versailles and the Rhine Pact of Locarno of 16 October 1925, and falsely announced to the world that 'we have no territorial demands to make in Europe.' "

The demilitarized zone of the Rhineland obviously was a sore wound with the Nazis ever since its establishment after World War I. Not only was this a blow to their increasing pride, but it was a bar to any effective strong position which Germany might want to take on any vital issues. In the event of any sanctions against Germany, in the form of military action, the French and other powers would get well into Germany, east of the Rhine, before any German resistance could even be put up. Therefore, any German plans to threaten or breach international obligations or for any kind of aggression, required the preliminary reoccupation and refortification of this open Rhineland territory. Plans and preparations for the reoccupation of the Rhineland started very early.

We have a document, a German captured document, in German script, which we identify as C-139, and which appears to be signed by the handwriting of Blomberg. I offer it in evidence as Exhibit USA-53.

The document deals with what is called "Operation Schulung", which means schooling, or training. It is dated 2 May 1935 and even refers to prior Staff discussions on the subject dealt with. It is addressed to the Chief of the Army Command, who at that time, I believe, was Fritsch, the Chief of the Navy High Command, Raeder, and the Reich Minister for Air, Göring.

It does not use the name "Rhineland" and does not, in terms, refer to it. It is our view that it was a military plan for the military reoccupation of the Rhineland, in violation of the Treaty of Versailles and the Rhine Pact of Locarno.

I read from the first part of the document which is headed "top secret":

"For the operation suggested in the last Staff talks of the Armed Forces, I lay down the code name 'Schulung' "— training.—

"The supreme direction of Operation Schulung rests with the Reich Minister of Defense as this is a joint undertaking of the three services.

"Preparations for the operation will begin forthwith according to the following directives:

"1. General.

"(1) The operation must, on issue of the code words 'Carry out Schulung', be executed by a surprise blow at lightning speed. Strictest secrecy is necessary in the preparations and only the very smallest number of officers should be informed and employed in the drafting of reports, drawings, *et cetera,* and these officers only in person.

"(2) There is no time for mobilization of the forces taking part. These will be employed in their peacetime strength and with their peacetime equipment.

"(3) The preparation for the operation will be made without regard to the present inadequate state of our armaments. Every improvement of the state of our armaments will make possible a greater measure of preparedness and thus result in better prospects of success."

The rest of the order deals with military details and I think it is unnecessary to read it.

There are certain points, in the face of this order, which are inconsistent with any theory that it was merely a training order, or that it might have been defensive in nature. The operation was to be carried out as a surprise blow at lightning speed (Schlagartig als Überfall).

The air forces were to provide support for the attack. There was to be reinforcement by the East Prussian division. Furthermore, this document is dated 2 May 1935, which is about 6 weeks after the promulgation of the Conscription Law on 16 March 1935, and so it could hardly have been planned as a defensive measure against any expected sanctions which might have been applied by reason of the passage of the Conscription Law.

Of course the actual reoccupation of the Rhineland did not take place until 7 March 1936, so that this early plan would necessarily have been totally revised to suit the existing conditions and specific objectives. As I say, although the plan does not mention

the Rhineland, it has all of the indications of a Rhineland operation plan. That the details of this particular plan were not ultimately the ones that were carried out in reoccupying the Rhineland does not at all detract from the vital fact that as early as 2 May 1935 the Germans had already planned that operation, not merely as a Staff plan but as a definite operation. It was evidently not on their timetable to carry out the operation so soon if it could be avoided. But they were prepared to do so, if necessary, to resist French sanctions against their Conscription Law.

It is significant to note the date of this document is the same as the date of the signature of the Franco-Russian Pact, which the Nazis later asserted as their excuse for the Rhineland reoccupation.

The military orders on the basis of which the Rhineland reoccupation was actually carried into execution, on 7 March 1936, were issued on 2 March 1936 by the War Minister and Commander-in-Chief of the Armed Forces Blomberg, and addressed to the Commander-in-Chief of the Army Fritsch, the Commander-in-Chief of the Navy Raeder, and Air Minister and Commander-in-Chief of the Air Force Göring. We have that order signed by Blomberg, headed, as usual, "top secret," identified by us as C-159. I offer it in evidence as Exhibit USA-54.

The German copy of that document bears the Defendant Raeder's initial in green pencil, with a red pencil note: "To be submitted to the C-in-C of the Navy."

The first part of the order reads:

"Supreme Command of the Navy:

"1. The Führer and Reich Chancellor has made the following decision:

"By reason of the Franco-Russian Mutual Assistance Pact, the obligations accepted by Germany in the Locarno Treaty, as far as they apply to Articles 42 and 43, of the Treaty of Versailles which referred to the demilitarized zone, are to be regarded as obsolete.

"2. Sections of the Army and Air Force will therefore be transferred simultaneously in a surprise move to garrisons of the demilitarized zone. In this connection, I issue the following orders...."

There follow the detailed orders for the military operation.

We also have the orders for naval cooperation. The original German document, which we identify as C-194, was issued on 6 March 1936, in the form of an order on behalf of the Reich Minister for War, Blomberg, signed by Keitel, and addressed to the Commander-in-Chief of the Navy Raeder, setting out detailed

instructions for the Commander-in-Chief of the fleet and the admirals commanding the Baltic and North Sea. I offer the document in evidence as Exhibit USA-55.

The short covering letter is as follows:

"To: C-in-C Navy.

"The Minister has decided the following after the meeting:

"1. The inconspicuous air reconnaissance in the German bay, not over the line Texel-Doggerbank, from midday on Z-Day onward, has been approved. C-in-C Air Force will instruct the Air Command VI from midday 7 March to hold in readiness single reconnaissance aircraft to be at the disposal of the C-in-C fleet.

"2. The Minister will reserve the decision to set up a U-boat reconnaissance line until the evening of 7 March. The immediate transfer of U-boats from Kiel to Wilhelmshafen has been approved.

"3. The proposed advance measures for the most part exceed Degree of Emergency A and therefore are out of the question as the first countermeasures to be taken against military preparations of neighboring states. It is far more essential to examine the advance measures included in Degree of Emergency A, to see whether one or other of the especially conspicuous measures could not be omitted."

That is signed "Keitel".

The rest of the documents are detailed naval orders—operational orders—and I think I need not read further.

For the historical emphasis of this occasion, Hitler made a momentous speech on 7 March 1936. I have the volume of the *Völkischer Beobachter,* Berlin, Sunday, 8 March 1936, our Document 2289-PS, which I offer in evidence as Exhibit USA-56.

This is a long speech which the world remembers and of which I shall only read a short portion:

"Men of the German Reichstag! France has replied to the repeated friendly offers and peaceful assurances made by Germany by infringing the Rhine Pact through a military alliance with the Soviet Union exclusively directed against Germany. In this manner, however, the Locarno Rhine Pact has lost its inner meaning and ceased in practice to exist. Consequently, Germany regards herself, for her part, as no longer bound by this dissolved treaty. The German Government is now constrained to face the new situation created by this alliance, a situation which is rendered more acute by the fact that the Franco-Soviet treaty has been supplemented

by a Treaty of Alliance between Czechoslovakia and the Soviet Union exactly parallel in form. In accordance with the fundamental right of a nation to secure its frontiers and ensure its possibilities of defense, the German Government has today restored the full and unrestricted sovereignty of Germany in the demilitarized zone of the Rhineland."

The whole matter of the German reoccupation of the demilitarized zone of the Rhineland caused extensive international repercussions and study. As a result of the protests lodged with the League of Nations, the Council of the League made an investigation and announced the following finding, of which I ask the Tribunal to take judicial notice, as being carried in the *League of Nations Monthly Summary,* March 1936, Volume 16, Page 78; and it is also quoted in an article by Quincy Wright, in the *American Journal of International Law,* Page 487, 1936.

The finding is this:

"That the German Government has committed a breach of Article 43 of the Treaty of Versailles by causing, on March 7, 1936, military forces to enter and establish themselves in the demilitarized zone referred to, in Article 42 and the following articles of that Treaty, and in the Treaty of Locarno."

At the same time, on 7 March 1936, as the Germans reoccupied the Rhineland in flagrant violation of the Versailles and Locarno Treaties, they again tried to allay the fears of other European powers and lead them into a false sense of security by announcing to the world: "We have no territorial demands to make in Europe."

That appears in this same speech of Hitler's, which I have offered in evidence as Exhibit USA-56, which is Document 2289-PS. The language will be found on Page 6, Column 1:

"We have no territorial claims to make in Europe. We know above all that all the tensions resulting either from false territorial settlements or from the disproportion of the numbers of inhabitants to their living spaces cannot, in Europe, be solved by war."

Most of the acts set forth in the paragraph of the Indictment which I have been discussing, I think do not need judicial proof because they are historical facts. We have been able to bring you a number of interesting documents illuminating that history. The existence of prior plans and preparations is indisputable from the very nature of things. The method and sequence of these plans and their accomplishment are clearly indicative of the progressing and increasingly aggressive character of the Nazi objectives, inter-

national obligations and considerations of humanity notwithstanding.

The detailed presentation of the violations of treaties and international law will be presented by our British colleagues, in support of Count Two of the Indictment.

In clear relief, there is shown the determination of the Nazi conspirators to use whatever means were necessary to abrogate and overthrow the Treaty of Versailles and its restrictions upon the military armament and activity of Germany. In this process, they conspired and engaged in secret rearmament and training, the secret production of munitions of war, and they built up an air force. They withdrew from the International Disarmament Conference and the League of Nations on October 14, 1933. They instituted universal military service on March 16, 1935. On May 21, 1935 they falsely announced that they would respect the territorial limitations of Versailles and Locarno. On March 7, 1936 they reoccupied and fortified the Rhineland and at the same time, falsely announced that they had no territorial demands in Europe.

The objectives of the conspirators were vast and mighty, requiring long and extensive preparations. The process involved the evasion, circumvention, and violation of international obligations and treaties. They stopped at nothing.

The accomplishment of all those things, together with getting Versailles out of the way, constituted an opening of the gates toward the specific aggressions which followed.

I pass next, if the Tribunal please, to the presentation of the story of the aggression against Austria. I do not know whether Your Honor desires me to start on that or not. I am perfectly willing to do so.

THE PRESIDENT: Are you going to use this volume of documents marked "M" tomorrow?

MR. ALDERMAN: There will be a new one marked "N".

THE PRESIDENT: The Tribunal will adjourn until 10 o'clock tomorrow morning.

[The Tribunal adjourned until 28 November 1945 at 1000 hours.]

SEVENTH DAY

Wednesday, 28 November 1945

Morning Session

THE PRESIDENT: I call upon counsel for the United States.

MR. ALDERMAN: May it please the Tribunal, at this point we distribute document book lettered "N", which will cover the next phase of the case, as I will not undertake to present it. Of the five large phases of aggressive warfare, which I undertake to present to the Tribunal, I have now completed the presentation of the documents on the first phase, the phase lasting from 1933 to 1936, consisting of the preparation for aggression.

The second large phase of the program of the conspirators for aggression lasted from approximately 1936 to March 1939, when they had completed the absorption of Austria and the occupation of all of Czechoslovakia. I again invite the Court's attention to the chart on the wall. You may be interested in glancing at it from time to time as the presentation progresses.

The relevant portions of the Indictment to the present subject are set forth in Subsection 3, under Section IV (F), appearing on Pages 7 and 8 of the printed English text. This portion of the Indictment is divided into three parts: First, the 1936 to 1938 phase of the plan, planning for the assault on Austria and Czechoslovakia; second, the execution of the plan to invade Austria, November 1937 to March 1938; third, the execution of the plan to invade Czechoslovakia, April 1938 to March 1939.

As I previously indicated to the Tribunal, the portion of the Indictment headed "(a) Planning for the assault on Austria and Czechoslovakia" is proved for the most part by Document Number 386-PS, which I introduced on Monday. That is Exhibit USA-25. That was one of the handful of documents with which I began my presentation of this part of the case. The minutes taken by Colonel Hossbach of the meeting in the Reich Chancellery on 5 November 1937, when Hitler developed his political last will and testament, reviewed the desire of Nazi Germany for more room in central Europe, and made preparations for the conquest of Austria and Czechoslovakia as a means of strengthening Germany for the general pattern of the Nazi conspiracy for aggression.

I shall present the material on this second, or Austrian phase of aggression, in two separate parts. I shall first present the

materials and documents relating to the aggression against Austria. They have been gathered together in the document book which has just been distributed. Later I shall present the material relating to the aggression against Czechoslovakia. They will be gathered in a separate document book.

First, we have the events leading up to the autumn of 1937, and the strategic position of the National Socialists in Austria. I suggest at this point, if the Tribunal please, that in this phase we see the first full flowering of what has come to be known as Fifth Column infiltration techniques in another country, and first under that, the National Socialist aim of absorption of Austria.

In order to understand more clearly how the Nazi conspirators proceeded, after the meeting of 5 November 1937, covered by the Hossbach minutes, it is advisable to review the steps which had already been taken in Austria by the Nazi Socialists of both Germany and Austria. The position which the Nazis had reached by the fall of 1937 made it possible for them to complete their absorption of Austria much sooner and with much less cost than had been contemplated at the time of the meeting covered by the Hossbach minutes.

The acquisition of Austria had long been a central aim of the German National Socialists. On the first page of *Mein Kampf* Hitler said: "German Austria must return to the Great German Motherland." He continued by stating that this purpose of having common blood in a common Reich could not be satisfied by a mere economic union. Moreover, this aim of absorption of Austria was an aim from 1933 on and was regarded as a serious program which the Nazis were determined to carry out.

At this point, I should like to offer in evidence our Document Number 1760-PS, which, if admitted, would be Exhibit USA-57. This document is an affidavit executed in Mexico City on 28 August of this year by George S. Messersmith, United States Ambassador, now in Mexico City. Before I quote from Mr. Messersmith's affidavit, I should like to point out briefly that Mr. Messersmith was Consul General of the United States of America in Berlin from 1930 to late spring of 1934. He was then made American Minister in Vienna where he stayed until 1937.

In this affidavit he states that the nature of his work brought him into frequent contact with German Government officials, and he reports in this affidavit that the Nazi Government officials, with whom he had contact, were on most occasions amazingly frank in their conversation and concealed none of their aims.

If the Court please, this affidavit, which is quite long, presents a somewhat novel problem of treatment in the presentation of this case. In lieu of reading this entire affidavit into the record, I

should like, if it might be done in that way, to offer in evidence, not merely the English original of the affidavit, but also a translation into German, which has been mimeographed. This translation of the affidavit into German has been distributed to counsel for the defendants.

DR. EGON KUBUSCHOK (Counsel for Defendant Von Papen): An affidavit of a witness who is obtainable has just been turned over to the Court. The content of the affidavit offers so many subjective opinions of the witness, that it is imperative we hear the witness personally in this matter.

I should like to take this occasion to ask that it be decided as a matter of principle, whether that which a witness can testify from his own knowledge may, without further ado, be presented in the form of an affidavit; or whether if a witness is living and can be reached the principle of oral proceedings should be applied, that is, the witness should be heard directly.

MR. ALDERMAN: If the Tribunal please, I should like to be heard briefly on the matter.

THE PRESIDENT: You have finished what you had to say, I understand?

DR. KUBUSCHOK: Yes.

THE PRESIDENT: Very well, we will hear Mr. Alderman.

MR. ALDERMAN: May it please the Tribunal, I recognize, of course, the inherent weakness of an affidavit as evidence where the witness is not present and subject to cross-examination. Mr. Messersmith is an elderly gentleman. He is not in good health. It was entirely impracticable to try to bring him here; otherwise, we should have done so.

I remind the Court of Article 19 of the Charter:

> "The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence, which it deems to have probative value."

Of course, the Court would not treat anything in an affidavit such as this as having probative value unless the Court deemed it to have probative value; and if the defendants have countering evidence, which is strong enough to overcome whatever is probative in this affidavit, of course the Court will treat the probative value of all the evidence in accordance with this provision of the Charter.

By and large, this affidavit and another affidavit by Mr. Messersmith which we shall undertake to present cover background material which is a matter of historical knowledge, of which the Court could take judicial notice. Where he does quote these

amazingly frank expressions by Nazi leaders, it is entirely open to any of them, who may be quoted, to challenge what is said, or to tell Your Honors what they believe was said. In any event, it seems to me that the Court can accept an affidavit of this character, made by a well-known American diplomat, and give it whatever probative value the Court thinks it has.

As to the question of reading the entire affidavit, I understand the ruling of the Court to be that only those parts of documents, which are quoted in the record, will be considered to be in the record. It will be based upon the necessity of giving the German counsel knowledge of what was being used. As to these affidavits, we have furnished them complete German translations. It seems to us that a different rule might obtain where that has been done.

THE PRESIDENT: Mr. Alderman, have you finished what you had to say?

MR. ALDERMAN: Yes, sir.

DR. KUBUSCHOK: The representative of the Prosecution takes the point of view that the age and state of health of the witness makes it impossible to summon him as a witness. I do not know the witness personally. Consequently, I am not in a position to state to what extent he is actually incapacitated. Nevertheless, I have profound doubts regarding the presentation of evidence of such an old and incapacitated person. I am not speaking specifically now about Mr. Messersmith. I do not think the Court can judge to what extent old age and infirmity can possibly influence memory and reasoning powers; so, personal presence would seem absolutely indispensable.

Furthermore, it is important to know what questions, *in toto*, were put to the witness. An affidavit only reiterates the answers to questions which were put to the person. Very often conclusions can be drawn from unanswered questions. It is here a question of evidence solely on the basis of an affidavit. For that reason we are not in a position to assume, with absolute certainty, that the evidence of the witness is complete.

I cannot sanction the intention of the Prosecution in this case to introduce two methods of giving evidence of different value; namely, a fully valid one through direct evidence of a witness, and a less complete one through evidence laid down in an affidavit. The situation is this: Either the evidence is sufficient, or it is not. I think the Tribunal should confine itself to complete and fully valid evidence.

THE PRESIDENT: Mr. Alderman, did you wish to add anything?

MR. ALDERMAN: I wish to make this correction, perhaps of what I said. I did not mean to leave the implication that Mr. Messersmith is in any way incapacitated. He is an elderly man,

about 70 years old. He is on active duty in Mexico City; the main difficulty is that we did not feel we could take him away from his duties in that post, combined with a long trip and his age.

THE PRESIDENT: That is all, is it?

MR. ALDERMAN: Yes.

THE PRESIDENT: The Tribunal has considered the objection which has been raised. In view of the powers which the Tribunal has under Article 19 of the Charter, which provides that the Tribunal shall not be bound by technical rules of evidence, but shall adopt and apply to the greatest possible extent expeditious and nontechnical procedure and shall admit any evidence which it deems to have probative value, the Tribunal holds that affidavits can be presented, and that in the present case it is a proper course.

The question of the probative value of an affidavit as compared with a witness who has been cross-examined would, of course, be considered by the Tribunal. If, at a later stage, the Tribunal thinks the presence of a witness is of extreme importance, the matter can be reconsidered. I add this: If the defense wish to put interrogatories to the witness, they will be at liberty to do so.

MR. ALDERMAN: Thank you, Your Honor. I offer then our Document 1760-PS as Exhibit USA-57, affidavit by George S. Messersmith. Rather than reading the entire affidavit, unless the Court wishes me to do so, I intend to paraphrase and state the substance of what is covered in various parts of the affidavit.

THE PRESIDENT: The Tribunal think it would be better to adhere to the rule which we have laid down: That only what is read in the court will form part of the record.

MR. ALDERMAN: I shall read then, if the Tribunal please, from the fourth paragraph on the third page of the English copy, the following list of names, headed by President Miklas of Austria and Chancellor Dollfuss:

> "From the very beginnings of the Nazi Government, I was told by both high and secondary government officials in Germany that incorporation of Austria into Germany was a political and economic necessity and that this incorporation was going to be accomplished 'by whatever means were necessary.' Although I cannot assign definite times and places, I am sure that at various times and places, every one of the German officials whom I have listed earlier in this statement told me this, with the exception of Schacht, Von Krosigk and Krupp von Bohlen. I can assert that it was fully understood by everyone in Germany who had any knowledge whatever of what was going on that Hitler and the Nazi Government were irrevocably committed to this end, and

the only doubt which ever existed in conversations or statements to me was how and when."

In connection with that paragraph, I invite your attention to the list of German officials to whom he refers on Page 2 of the affidavit. They are listed as Hermann Göring, General Milch, Hjalmar Schacht, Hans Frank, Wilhelm Frick, Count Schwerin von Krosigk, Joseph Goebbels, Richard Walter Darré, Robert Ley, Hans Heinrich Lammers, Otto Meissner, Franz von Papen, Walter Funk, General Wilhelm Keitel, Admiral Erich von Raeder, Admiral Karl Dönitz, Dr. Bohle, Dr. Stuckert, Dr. Krupp von Bohlen, and Dr. Davidson. The affiant states he was sure that at various times and places, everyone of those listed German officials had made these statements to him, with the exception of Schacht, Von Krosigk, and Krupp von Bohlen. I shall continue with the next paragraph:

"At the beginning of the Nazi regime in 1933, Germany was, of course, far too weak to permit any open threats of force against any country, such as the threats which the Nazis made in 1938. Instead it was the avowed and declared policy of the Nazi Government to accomplish the same results which they later accomplished through force, through the methods which had proved so successful for them in Germany: Obtain a foothold in the Cabinet, particularly in the Ministry of the Interior, which controlled the police, and then quickly eliminate opposition elements. During my stay in Austria, I was told on any number of occasions by Chancellor Dollfuss, Chancellor Schuschnigg, President Miklas, and other high officials of the Austrian Government that the German Government kept up constant and unceasing pressure upon the Austrian Government to agree to the inclusion of a number of ministers with Nazi orientation. The English and French ministers in Vienna, with whom I was in constant and close contact, confirmed this information through statements which they made to me of conversations which they had with high Austrian officials."

I shall read other portions of the affidavit as the presentation proceeds, on the question of pressure used against Austria, including terror and intimidation, culminating in the unsuccessful Putsch of July 26, 1934. To achieve their ends the Nazis used various kinds of pressure. In the first place, they used economic pressure. A law of 24 March 1933, a German law, imposed a prohibitive 1,000 Reichsmark penalty on trips to Austria. It brought great hardship to this country which relied very heavily on its tourist trade. For that I cite the *Reichsgesetzblatt,* 1933, Part I, Page 311, and ask the Court to take judicial notice of that German law.

The Nazis used propaganda and they used terroristic acts, primarily bombings. Mr. Messersmith's affidavit, Document 1760-PS, from which I have already read, goes into some detail with respect to these outrages. I read again from Page 4 of the affidavit, the English version:

"The outrages were an almost constant occurrence, but there were three distinct periods during which they rose to a peak. During the first two of these periods, in mid-1933 and in early 1934, I was still in Berlin. However, during that period I was told by high Nazi officials in conversation with them, that these waves of terror were being instigated and directed by them. I found no concealment in my conversations with high Nazi officials of the fact that they were responsible for these activities in Austria. These admissions were entirely consistent with the Nazi thesis that terror is necessary and must be used to impose the will of the Party not only in Germany but in other countries. I recall specifically that General Milch was one of those who spoke frankly that these outrages in Austria were being directed by the Nazi Party, and expressed his concern with respect thereto and his disagreement with this definite policy of the Party.

"During the wave of terroristic acts in May and June 1934, I had already assumed my duties as American Minister in Vienna. The bomb outrages during this period were directed primarily at railways, tourist centers, and the Catholic Church, which latter, in the eyes of the Nazis, was one of the strongest organizations opposing them. I recall, however, that these outrages diminished markedly for a few days during the meeting of Hitler and Mussolini in Venice in mid-June 1934. At that time Mussolini was strongly supporting the Austrian Government and was strongly and deeply interested in maintaining Austrian independence and sovereignty, and in keeping down Nazi influence and activity in Austria. At that time also Hitler could not afford an open break with Mussolini and undoubtedly agreed to the short cessation of these bomb outrages on the insistence of Mussolini because he, Hitler, wished to achieve as favorable an atmosphere for the meeting between him and Mussolini as possible. The cessation of the bomb outrages during the Hitler-Mussolini conversations was considered by me and by the Austrian authorities and by all observers at that time as an open admission on the part of Hitler and the German Government that the outrages were systematically and completely instigated and controlled from Germany."

Turning to Page 7 of the English version, following the line which reads, "Official dispatch from Vienna" dated July 26, 1934, I quote the following paragraph:

> "In addition to these outrages, the Nazis attempted to bring pressure upon Austria by means of the 'Austrian Legion'. This organization, a para-military force of several thousand men, was stationed near the Austrian border in Germany as a constant and direct threat of violent action against Austria. It was without any question sanctioned by the Nazi Government of Germany, as it could otherwise not have existed, and it was armed by them. It was made up of Austrian Nazis who had fled from Austria after committing various crimes in Austria, and by Austrians in Germany who were attracted by the idle life and pay given by the German authorities."

These terroristic activities of the Nazis in Austria continued until July 25, 1934. It is a well-known historical fact of which I ask the Court to take judicial notice that on that day members of the NSDAP, the Nazi Party, attempted a revolutionary Putsch in Austria and killed Chancellor Dollfuss.

At this point I should like to invite your attention to the fact that the Indictment alleges in Count Four, Crimes against Humanity, Paragraph B on Page 26 of the English printed text, that the Nazis murdered amongst others Chancellor Dollfuss. I do not have available an official authenticated account of the details of that Putsch but I think that it will suffice if I briefly recall to the Court what is, after all, a well-known matter of history.

On July 25, 1934, about noon, 100 men dressed in the uniform of the Austrian Army seized the Federal Chancellery. Chancellor Dollfuss was wounded trying to escape, being shot twice at close quarters. The radio building in the center of the town was overwhelmed, and the announcer was compelled to broadcast the news that Dollfuss had resigned and that Dr. Rintelen had taken his place as Chancellor. Although the Putsch failed, the insurgents kept control of the Chancellery building, and agreed to give it up only after they had a safe conduct to the German border. The insurgents contacted the German Minister Dr. Rieth by telephone and subsequently had private negotiations with him in the building. At about 7 p. m. they yielded the building, but Chancellor Dollfuss breathed his last about 6 p. m., not having had the services of a doctor.

It is also a well-known historical fact that the German Government denied all complicity in this Putsch and in this assassination. Hitler removed Dr. Rieth as Minister on the ground that he had offered a safe conduct to the rebels without making inquiry of the

German Government, and had thus without reason dragged the German Reich into an internal Austrian affair in public sight.

This statement appears in a letter which Hitler sent to Defendant Papen on July 26, 1934. I shall offer that letter a little later.

Although the German Government denied any knowledge or complicity in this Putsch, we think there is ample basis for the conclusion that the German Nazis bear responsibility for these events. It is not my purpose, with respect to this somewhat minor consideration, to review the extensive record in the trial of the Austrian Nazi Planetta and others who were convicted for the murder of Dollfuss. Similarly I have no intention of presenting to the Court the contents of the Austrian *Braunbuch,* issued after July 25. The Court will, I think, take judicial notice.

I should like, instead, to mention a few brief items which seem to us sufficient for the purpose. I quote again from our Exhibit Number 1760-PS, from the Messersmith affidavit, USA-57, on Page 7, the paragraph in the middle of the page:

"The events of the Putsch of July 25, 1934, are too well known for me to repeat them in this statement. I need say here only that there can be no doubt that the Putsch was ordered and organized by the Nazi officials from Germany through their organization in Austria made up of German Nazis and Austrian Nazis. Dr. Rieth, the German Minister in Vienna, was fully familiar with all that was going to happen and that was being planned. The German Legation was located directly across the street from the British Legation, and the Austrian secret police kept close watch on the persons who entered the German Legation.

"The British had their own secret service in Vienna at the time, and they also kept a discreet surveillance over the people entering the German Legation. I was told by both British and Austrian officials that a number of men who were later found guilty by the Austrian courts of having been implicated in the Putsch had frequented the German Legation. In addition, I personally followed very closely the activities of Dr. Rieth, and I never doubted, on the basis of all my information, that Dr. Rieth was in close touch and constant touch with the Nazi agents in Austria, these agents being both German and Austrian. Dr. Rieth could not have been unfamiliar with the Putsch and the details in connection therewith. I recall, too, very definitely from my conversations with the highest officials of the Austrian Government after the Putsch their informing me that Dr. Rieth had been in touch with Von Rintelen, who, it had

been planned by the Nazis, was to succeed Chancellor Dollfuss, had the Putsch been successful.

"It may be that Dr. Rieth was himself not personally sympathetic with the plans for the Putsch, but there is no question that he was fully familiar with all these plans and must have given his assent thereto and connived therein.

"As this Putsch was so important and was a definite attempt to overthrow the Austrian Government and resulted in the murder of the Chancellor of Austria, I took occasion to verify at the time for myself various other items of evidence indicating that the Putsch was not only made with the knowledge of the German Government but engineered by it. I found and verified that almost a month before the Putsch Goebbels told Signor Cerruti, the Italian Ambassador in Berlin, that there would be a Nazi government in Vienna in a month."

I should also like to offer in evidence Ambassador Dodd's diary, 1933-38, a book published in 1941, our Document 2832-PS, and particularly the entry for July 26, 1934. We have the book with the two pages to which I have reference. I should like to offer that portion of the book in evidence as Exhibit USA-58, further identified as our Document 2832-PS.

Mr. Dodd, then Ambassador to Berlin, made the following observations in that entry. First he noted that in February 1934 Ernst Hanfstaengl advised Mr. Dodd that he brought what was virtually an order from Mussolini to Hitler to leave Austria alone and to dismiss and silence Theodor Habicht, the German agent in Munich, who had been agitating for annexation of Austria. On June 18 in Venice, Hitler was reported to have promised Mussolini to leave Austria alone. Mr. Dodd further states, and I quote from his entry of July 26, 1934:

"On Monday, July 23, after repeated bombings in Austria by Nazis, a boat loaded with explosives was seized on Lake Constance by the Swiss police. It was a shipment of German bombs and shells to Austria from some arms plant. That looked ominous to me, but events of that kind had been so common that I did not report it to Washington.

"Today evidence came to my desk that last night, as late as 11 o'clock, the Government issued formal statements to the newspapers rejoicing at the fall of Dollfuss and proclaiming the Greater Germany that must follow. The German Minister in Vienna had actually helped to form the new cabinet. He had, as we now know, exacted a promise that the gang of Austrian Nazi murderers should be allowed to go

into Germany undisturbed, but it was realized about 12 o'clock that although Dollfuss was dead the loyal Austrians had surrounded the Government Palace and prevented the organization of a new Nazi regime. They held the murderers prisoners. The German Propaganda Ministry therefore forbade publication of the news sent out an hour before and tried to collect all the releases that had been distributed. A copy was brought to me today by a friend.

"All the German papers this morning lamented the cruel murder and declared that it was simply an attack of discontented Austrians, not Nazis. News from Bavaria shows that thousands of Austrian Nazis living for a year in Bavaria on German support had been active for 10 days before, some getting across the border contrary to law, all drilling and making ready to return to Austria. The German propagandist Habicht was still making radio speeches about the necessity of annexing the ancient realm of the Hapsburgs to the Third Reich, in spite of all the promises of Hitler to silence him. But now that the drive has failed and the assassins are in prison in Vienna, the German Government denounces all who say there was any support from Berlin.

"I think it will be clear one day that millions of dollars and many arms have been pouring into Austria since the spring of 1933. Once more, the whole world is condemning the Hitler regime. No people in all modern history has been quite so unpopular as Nazi Germany. This stroke completes the picture. I expect to read a series of bitter denunciations in the American papers when they arrive about 10 days from now."

As I stated before, the German Government denied any connection with the Putsch and the murder of Dollfuss. In this connection, I should like to invite attention to the letter of appointment which Hitler wrote to the Defendant Von Papen on 26 July 1934. This letter appears in a standard German reference work *Dokumente der Deutschen Politik*, Volume 2, Page 83. For convenience we have identified it as Document 2799-PS, and a copy translated into English is included in the document book. The defendants may examine the German text in the *Dokumente der Deutschen Politik*, a copy of which is present in my hand, Page 83 of Volume 2.

I ask the Court if it will take judicial notice of this original German typing.

I should like to read this letter which Chancellor Hitler sent to Vice Chancellor Von Papen. I think it will provide us with a

little historical perspective and perhaps freshen our recollection of the ways in which the Nazi conspirators worked. In considering Hitler's letter to the Defendant Von Papen on July 26, we might bear in mind as an interesting sidelight, the widespread report at that time, and I mention this only as a widespread report, that the Defendant Von Papen narrowly missed being purged on June 30, 1934, along with the Nazi Ernst Roehm and others. The letter from Hitler to Von Papen is as follows:

"Dear Herr Von Papen:

"As a result of the events in Vienna, I am compelled to suggest to the Reich President the removal of the German Minister to Vienna, Dr. Rieth, from his post, because he, at the suggestion of Austrian Federal Ministers and the Austrian rebels, respectively consented to an agreement made by both these parties concerning the safe conduct and retreat of the rebels to Germany without making inquiry of the German Reich Government. Thus, the Minister has dragged the German Reich into an internal Austrian affair without any reason.

"The assassination of the Austrian Federal Chancellor which was strictly condemned and regretted by the German Government has made the situation in Europe, already fluid, more acute, without any fault of ours. Therefore, it is my desire to bring about, if possible, an easing of the general situation, and especially to direct the relations with the German Austrian State, which have been so strained for a long time, again into normal and friendly channels.

"For this reason, I request you, dear Herr Von Papen, to take over this important task, just because you have possessed, and continue to possess, my most complete and unlimited confidence ever since we have worked together in the Cabinet.

"Therefore, I have suggested to the Reich President that you, upon leaving the Reich Cabinet and upon release from the office of Commissioner for the Saar, be called on a special mission to the post of the German Minister in Vienna for a limited period of time. In this position you will be directly subordinated to me.

"Thanking once more for all that you have at one time done for the co-ordination of the Government of the National Revolution, and since then together with us for Germany, I remain, yours very sincerely, Adolf Hitler."

Now let us look at the situation 4 years later, on July 25, 1938, after the Anschluss with Austria. At that time the German officials

no longer expressed regrets over the death of Dollfuss. They were eager and willing to reveal what the world already knew, that they were identified with and sponsors of the murder of the former Chancellor.

I offer in evidence at this point Document L-273, which I offer as Exhibit USA-59. That document is a dispatch from the American Consul General, Vienna, to the Secretary of State, dated July 26, 1938. Unfortunately, through a mechanical slip, this document which is in English in the original, was not mimeographed in English and is not in your document book. However, it was translated into German, and is in the document book which counsel for the defendants have. I read from a photostatic copy of the dispatch:

"The two high points of the celebration"—here was a celebration—"were the memorial assembly on the 24th at Klagenfurt, capital of the Province of Carinthia, where in 1934 the Vienna Nazi revolt found its widest response and the march on the 25th to the former Federal Chancellery in Vienna by the surviving members of the SS Standarte 89, which made the attack on the Chancellery in 1934."—a reconstitution of the crime, so to say.

"The assembled thousands at Klagenfurt were addressed by the Führer's deputy, Rudolf Hess, in the presence of the families of the 13 National Socialists who were hanged for their part in the July Putsch. The Klagenfurt memorial celebration was also made the occasion for the solemn swearing in of the seven recently appointed Gauleiter of the Ostmark. From the point of view of the outside world, this speech of Reich Minister Hess was chiefly remarkable for the fact that after devoting the first half of his speech to the expected praise of the sacrifices of the men, women, and youths of Austria in the struggle for Greater Germany, he then launched into a defense of the occupation of Austria, an attack on the 'lying foreign press' and on those who spread the idea of a new war. The world was fortunate, declared Hess, that Germany's leader was a man who would not allow himself to be provoked. The Führer does what is necessary for his people in sovereign calm and labors for the peace of Europe, even though provocators 'completely ignoring the deliberate threat of the peace of certain small states,' deceitfully claim that he is a menace to the peace of Europe.

"The march on the former Federal Chancellery,"—referring back to the Putsch of 4 years before—"now the Reichsstatthalterei, followed the exact route and time schedule of

the original attack. The marchers were met at the Chancellery by Reichsstatthalter Seyss-Inquart, who addressed them and unveiled a memorial tablet. From the Reichsstatthalterei the Standarte"—that is the SS organization which made the original attack and which marched on this occasion 4 years later—"marched from the old Ravag broadcasting center, from which false news of the resignation of Dollfuss had been broadcast, and there unveiled a second memorial tablet. Steinhaeusel, the present Police President of Vienna, is a member of the SS Standarte 89."

Today that original memorial plaque, if the Court please, is rubble, like so much of Nuremberg; but we found a photograph of it in the National Library in Vienna. I should like to offer this photograph in evidence. It was taken on this occasion 4 years later. The Nazi wreath encircles the memorial tablet. A large wreath of flowers with a very distinct swastika Nazi symbol was laid before the wreath. I offer that photograph identified as 2968-PS in evidence. I offer it as Exhibit USA-60. You will find that in the document book. I know of no more interesting or shocking document at which you could look. We call celebrating a murder 4 years later, "Murder by ratification."

As that photograph shows, this plaque which was erected to celebrate this sinister occasion reads: "One hundred and fifty-four German men of the 89th SS Standarte stood up here for Germany on July 25, 1934. Seven found death in the hands of the hangman."

The Tribunal may notice that the number "154" at the top of the plaque is concealed in the photograph by the Nazi wreath surrounding the plaque. I must confess that I find myself curiously interested in this tablet and in the photograph which was taken and carefully filed. The words chosen for this marble tablet, and surely we can presume that they were words chosen carefully, tell us clearly that the men involved were not mere malcontent Austrian revolutionaries, but were regarded as German men, were members of a para-military organization, and stood up here for Germany.

In 1934 Hitler repudiated Doctor Rieth because he dragged the German Reich into an internal Austrian affair without any reason. In 1938 Nazi Germany proudly identified itself with this murder, took credit for it, and took responsibility for it. Further proof in the conventional sense, it seems to us, is hardly necessary.

Next we refer to the program culminating in the Pact of July 11, 1936. In considering the activities of the Nazi conspirators in Austria between July 25, 1934 and November 1937 there is a distinct intermediate point, the Pact of July 11, 1936. Accordingly,

I shall first review developments in the 2-year period, July 1934-36.

First, we must consider the continued aim of eliminating Austria's independence, with particular relation to the Defendant Von Papen's conversation and activity. The first point that should be mentioned is this: The Nazi conspirators pretended to respect the independence and sovereignty of Austria, notwithstanding the aim of Anschluss stated in *Mein Kampf*. But in truth and in fact they were working from the very beginning to destroy the Austrian State.

A dramatic recital of the position of Defendant Von Papen in this regard is provided in Mr. Messersmith's affidavit, from which I have already quoted. I quote now from Page 9 of the English copy, the second paragraph, 1760-PS, Exhibit USA-57:

"That the policy of Anschluss remained wholly unchanged was confirmed to me by Franz von Papen when he arrived in Vienna as German Minister. It will be recalled that he accepted this assignment as German Minister even though he knew that he had been marked for execution in the St. Bartholomew's massacre of 30 June 1934. When, in accordance with protocol, he paid me a visit shortly after his arrival in Vienna, I determined that during this call there would be no reference to anything of importance, and I limited the conversation strictly to platitudes which I was able to do as he was calling on me in my office. I deemed it expedient to delay my return call for several weeks in order to make it clear to Von Papen that I had no sympathy with, and on the other hand was familiar with the objectives of his mission in Austria. When I did call on Von Papen in the German Legation, he greeted me with 'Now you are in my Legation and I can control the conversation.'

"In the boldest and most cynical manner he then proceeded to tell me that all of southeastern Europe, to the borders of Turkey, was Germany's natural hinterland, and that he had been charged with the mission of facilitating German economic and political control over all this region for Germany. He blandly and directly said that getting control of Austria was to be the first step. He definitely stated that he was in Austria to undermine and weaken the Austrian Government and from Vienna to work towards the weakening of the Governments in the other states to the south and southeast. He said that he intended to use his reputation as a good Catholic to gain influence with certain Austrians, such as Cardinal Innitzer, towards that end. He said that

he was telling me this because the German Government was bound on this objective of getting this control of southeastern Europe and that there was nothing which could stop it, and that our own policy and that of France and England was not realistic.

"The circumstances were such, as I was calling on him in the German Legation, that I had to listen to what he had to say and of course, I was prepared to hear what he had to say although I already knew what his instructions were. I was nevertheless shocked to have him speak so boldly to me, and when he finished I got up and told him how shocked I was to hear the accredited representative of a supposedly friendly state to Austria admit that he was proposing to engage in activities to undermine and destroy that Government to which he was accredited. He merely smiled and said of course this conversation was between us, and that he would of course not be talking to others so clearly about his objectives. I have gone into this detail with regard to this conversation, as it is characteristic of the absolute frankness and directness with which high Nazi officials spoke of their objectives."

And again, reading from the same document on Page 10, beginning at the last paragraph at the bottom of the page:

"On the surface, however, German activities consisted principally of efforts to win the support of prominent and influential men through insidious efforts of all kinds, including the use of the German diplomatic mission in Vienna and its facilities and personnel.

"Von Papen as German Minister entertained frequently and on a lavish scale. He approached almost every member of the Austrian Cabinet, telling them, as several of them later informed me, that Germany was bound to prevail in the long run, and that they should join the winning side if they wished to enjoy positions of power and influence under German control. Of course, openly and outwardly he gave solemn assurance that Germany would respect Austrian independence and that all that she wished to do was to get rid of elements in the Austrian Government like the Chancellor Schuschnigg and Starhemberg as head of the Heimwehr, and others, and replace them by a few 'nationally-minded' Austrians, which of course meant the Nazis. The whole basic effort of Von Papen was to bring about the Anschluss.

"In early 1935 the Austrian Foreign Minister, Berger-Waldenegg, informed me that in the course of a conversation with Von Papen, the latter had remarked, 'Yes, you have your French and English friends now, and you can have your independence a little longer.' The Foreign Minister, of course, told me this remark in German, but the foregoing is an accurate translation. The Foreign Minister told me that he had replied to Von Papen, 'I am glad to have from your own lips your own opinion which agrees with what your Chief has just said in the Saar and which you have taken such pains to deny.' Von Papen appeared to be terribly upset when he realized just what he had said and tried to cover his statements, but according to Berger-Waldenegg, kept constantly getting into deeper water.

"Von Papen undoubtedly achieved some success, particularly with men like Glaise-Horstenau and others who had long favored the Grossdeutschtum idea, but who nevertheless had been greatly disturbed by the fate of the Catholic Church. Without conscience or scruple, Von Papen exploited his reputation and that of his wife as ardent and devout Catholics to overcome the fears of these Austrians in this respect."

May I inquire if the Court expect to take a short recess?

THE PRESIDENT: Yes. We will adjourn now for 10 minutes.

[A recess was taken.]

THE PRESIDENT: The Tribunal wishes to make it clear, if I did not make it clear when I spoke before, that if Defense Counsel wish to put interrogatories to Mr. Messersmith upon his affidavit they may submit such interrogatories to the Tribunal in writing for them to be sent to Mr. Messersmith to answer.

FLOTTENRICHTER OTTO KRANZBÜHLER (Counsel for Defendant Dönitz): I do not know whether my question has yet been answered, or by what it has been made known by the President of the Court.

In the testimony of Mr. Messersmith, Dönitz' name was mentioned. It appears on Page 4 of the German version. I should like to read the whole paragraph:

"Admiral Karl Dönitz was not always in an amicable frame of mind. He was not a National Socialist when the National Socialists came to power" . . .

THE PRESIDENT: This passage was not read in evidence, was it?

DR. KRANZBÜHLER: No, only the name was mentioned.

THE PRESIDENT: I don't think the name was mentioned, because this part of the affidavit was not read.

DR. KRANZBÜHLER: The name was read, Mr. President.

THE PRESIDENT: Very well, go on.

DR. KRANZBÜHLER: *[Continuing.]*

"Nevertheless, he became one of the first high officers in the Army and fleet and was in complete agreement with the concepts and aims of National Socialism."

As an introduction to this paragraph, Mr. Messersmith said, in Document Number 1760, on Page 2, the last sentence before the Number 1:

"Among those whom I saw frequently and to whom I have reference in many of my statements were the following . . ."

Then after Number 16 Dönitz' name appears. My client has informed me that he has heard the name "Messersmith" today for the first time; that he does not know the witness Messersmith, has never seen him, nor has he ever spoken to him.

I therefore request that the witness Messersmith be brought before the Court to state when and where he spoke to the Defendant Dönitz.

THE PRESIDENT: The Tribunal has already ruled that the affidavit is admissible; that its probative value will of course be considered by the Tribunal, and the defendants' counsel have the right, if they wish, to submit interrogatories for the examination of Messersmith. Of course defendants will have the opportunity of giving evidence when their turn comes, then Admiral Dönitz, if he thinks it right, will be able to deny the statements of the affidavit.

DR. KRANZBÜHLER: Thank you.

MR. ALDERMAN: I want to call the Court's attention to a slight mistranslation into German of one sentence of the Messersmith affidavit. In the German translation the word "nicht" crept in when the negative was not in the English.

The English statement was:

"I deemed it expedient to delay my return call for several weeks in order to make it clear to Von Papen that I had no sympathy with and on the other hand was familiar with the objectives of his mission in Austria."

The German text contains the negative: "Und dass ich anderseits nicht mit den Zielen seiner Berufung in Österreich vertraut war." The "nicht" should not be in the German text.

The continued existence of Nazi organizations was a program of armed preparedness. The wiles of the Defendant Von Papen represented only one part of the total program of Nazi conspiracy. At the same time Nazi activities in Austria, forced underground during this period, were carried on.

Mr. Messersmith's affidavit on Pages 9 and 10, the English text, discloses the following. Reading from the last main paragraph on Page 9:

"Nazi activities, forced underground in this period, were by no means neglected. The Party was greatly weakened for a time as a result of the energetic measures taken against the Putsch and as a result of public indignation. Reorganization work was soon begun. In October 1934 the Austrian Foreign Minister, Berger-Waldenegg, furnished me the following memorandum, which he told me had been supplied to the Austrian Government by a person who participated in the meeting under reference."

I quote the first paragraph of the memorandum:

"A meeting of the chiefs of the Austrian National Socialist Party was held on 29 and 30 September 1934, at Bad Aibling in Bavaria."

Then, skipping four paragraphs and resuming on the fifth one:

"The Agents of the Party Direction in Germany have received orders in every Austrian district to prepare lists of all those persons who are known to support actively the present Government and who are prepared closely to cooperate with it.

"When the next action against the Government takes place those persons are to be proceeded against just as brutally as against all those other persons, without distinction of party, who are known to be adversaries of National Socialism.

"In a report of the Party leaders for Austria the following principles have been emphasized:

"A. The taking over of the power in Austria remains the principal duty of the Austrian National Socialist Party. Austria has for the German Reich a much greater significance and value than the Saar. The Austrian problem is the problem. All combat methods are consecrated by the end which they are to serve.

"B. We must, on every occasion which presents itself, appear to be disposed to negotiate, but arm at the same time for the struggle. The new phase of the struggle will be particularly serious and there will be this time two centers of terror, one along the German frontier and the other along the Yugoslav frontier."

That ends the quotation from the memorandum. I proceed with the next paragraph of the affidavit:

"The Austrian Legion was kept in readiness in Germany. Although it was taken back some miles further from the Austrian frontier, it remained undissolved in spite of the engagement which had been taken to dissolve it. The Austrian Government received positive information to this effect from time to time which it passed on to me and I had direct information to the same effect from reliable persons coming from Germany to Vienna who actually saw the Legion."

The fact of the reorganization of the Nazi Party in Austria is corroborated by a report of one of the Austrian Nazis.

I offer in evidence our Document Number 812-PS, as Exhibit USA-61. It contains three parts. First, there is a letter dated August 22, 1939 from Mr. Rainer, then Gauleiter at Salzburg, to the Defendant Seyss-Inquart, then Austrian Reich Minister. That letter encloses a letter dated July 6, 1939 written by Rainer to Reich Commissioner and Gauleiter Josef Bürckel.

DR. HANS LATERNSER: (Co-counsel for Defendant Seyss-Inquart): I object to the presentation of the letters contained in Document Number 812. Of course, I cannot object to the presentation of this evidence to the extent that this evidence is to prove that these letters were actually written. However, if these letters are to serve as proof for the correctness of their contents, then I must object to the use of these letters, for the following reason: Particularly, the third document: It is a letter which, as is manifest from its contents, has a certain bias, for this reason, that in this letter it is explained to what extent the Austrian Nazi Party participated in the Anschluss.

It purports, further, to expose the leading role played by the Party group Rainer-Klausner.

From the bias that is manifest in the contents of this letter, this letter cannot serve as proof for the facts brought forth in it, particularly since the witness Rainer, who wrote this letter, is available as a witness. I have discovered he is at present in Nuremberg.

I object to the use of this letter to the extent that it is to be used to prove the correctness of its contents, because the witness who can testify to that is at our disposal in Nuremberg.

THE PRESIDENT: The Tribunal will hear Mr. Alderman in answer to what has been said. The Tribunal has not yet read the letter.

MR. ALDERMAN: I think perhaps it would be better to read the letter before we argue about the significance of its contents.

THE PRESIDENT: Are you relying upon the letter as evidence of the facts stated in it?

MR. ALDERMAN: Yes.

THE PRESIDENT: From whom is the letter, and to whom is it addressed?

MR. ALDERMAN: The first letter is from Mr. Rainer who was at that time Gauleiter at Salzburg, to the Defendant Seyss-Inquart, then Reich Minister of Austria.

That letter encloses a letter dated July 6, 1939, written by Rainer to Reich Commissioner and Gauleiter Josef Bürckel. In that letter, in turn, Rainer enclosed a report on the events in the NSDAP of Austria from 1933 to March 11, 1938, the day before the invasion of Austria.

I had some other matters in connection with this that I did want to bring to the attention of the Tribunal before it passes upon the admissibility.

THE PRESIDENT: I don't think that the defendant's counsel is really challenging the admissibility of the document; he challenges the contents of the document.

MR. ALDERMAN: Yes. On that, in the first place, we are advised by defendant's counsel that this man Rainer is in Nuremberg. I would assume he is there.

We have also an affidavit by Rainer stating that what is stated in these communications is the truth. However, it seems to us that the communications themselves, as contemporaneous reports by a Party officer at the time, are much more probative evidence than anything that he might testify to before you today.

DR. LATERNSER: I have already said that this letter has these characteristics, that it is biased, that it tends to emphasize and exaggerate the participation of the Austrian Nazi Party on the Anschluss. Therefore, I must object to the use of this letter as objective evidence. It was not written with the thought in mind that the letter would be used as evidence before a court. If the writer had known that, the letter undoubtedly would have been formulated differently, considering his political activity.

I believe, although I am not sure, that the witness is in Nuremberg. In that case, according to a principle which is basic for all trial procedure, the witness should be presented to the Court personally, particularly since, in this case, the difficulties inherent in the question of Messersmith do not here pertain.

THE PRESIDENT: The Tribunal is of the opinion that the letters are admissible. They were written to and received by the Defendant Seyss-Inquart. The defendant can challenge the contents of the letters by his evidence.

If it is true that Rainer is in Nuremberg, it is open to the defendant to apply to the Tribunal for leave to call Rainer in due course. He can then challenge the contents of these letters, both by the Defendant Seyss-Inquart's evidence and by Rainer's evidence. The letters themselves are admitted.

MR. ALDERMAN: May it please the Tribunal, I agree quite fully with the statement that if it had been known that these letters were to be offered in evidence in a court of justice, they very probably would have been differently written. That applies to a great part of the evidence that we shall offer in this case. And I would say that if the photographer who took the photograph of the Memorial Plaque had known that his photographs would be introduced in evidence in a conspiracy case, he probably never would have snapped the shutter.

The letter from Rainer to Bürckel indicates that he was asked to prepare a short history of the role of the Party. Perhaps I had better read the covering letter, addressed to the Defendant Seyss-Inquart:

"Dear Dr. Seyss:

"I have received your letter of 19 August 1939, in which you asked me to inform you what I know of those matters which, among others, are the subject of your correspondence with Bürckel.

"I do not wish to discuss sundry talks and all that which has been brought to my notice in the course of time by different people. I wish to clarify essentially my own attitude.

"On 5 July 1939 I was asked by telephone by the Reich Commissioner Gauleiter Bürckel if I was in possession of the memorandum of Globus regarding the events of March. I told him that I did not have this memorandum, that I never possessed a single part of it; that I, furthermore, did not then participate in the matter and do not know its content. Because of official requests by Bürckel, I have entrusted him with a report accompanied by a letter written on 6 July.

"If Bürckel now writes to you that certain statements were confirmed by me, I feel obliged to entrust you with a copy each of my copies of those two documents, which were only written in single originals. I shall specially inform Bürckel of this, adding that I have given—apart from those written explanations — no confirmations, declarations, or criticisms

whatsoever regarding you and your attitude and that I have authorized nobody to refer to any statements of mine.

"Since the beginning of our collaboration, I have always expressed and represented forcefully my ideas regarding yourself and my opinion of your personality. This conception of mine was the very basis of our collaboration. The events of February and March have not changed this, especially since I considered the political success of 11 March merely as a confirmation of the intentions and convictions which have equally induced both of us to collaborate.

"As far as Globus is concerned, you are fully aware of his nature, which I judged always and in every situation only by its good side. I believe that you have already talked to Globus about the occurrences between the 11 March 1938 and today, and I am convinced that he will tell you everything that is bothering him, if you will speak to him about this matter, as is your intention.

"With best regards and Heil Hitler! Yours, Friedl Rainer."

And so Rainer writes his report, which is enclosed with this letter, to show that the Party as a whole is entitled to the glory which was excessively ascribed to one person, Dr. Seyss-Inquart.

I refer to the third paragraph of the first enclosure, the report to Reich Commissioner Gauleiter Josef Bürckel:

"We saw in March and April how a false picture about the actual leadership conditions developed from this fact which could not be corrected in spite of our attempts to that effect. This was an important factor for the varying moods of Globocnik who hoped especially from you that you would emphasize for Hitler, and also for the public, the role of the Party during the events preceding 12 March 1938. I limited myself to address this verbal and written declaration to Party member Hess, and furthermore to secure the documents from the March days. In addition, I spoke at every available opportunity about the fight of the Party. I did not undertake steps to give just credit to other persons for the glory which was excessively ascribed to one person, Dr. Seyss-Inquart, and I would not do that, primarily because I appear as a beneficiary, and furthermore, because I believe that I would not gladden Hitler by doing so.

"I am also convinced that Dr. Seyss-Inquart did not act crookedly, and furthermore, that Hitler does not want to commit an act of historical justice by special preference of his person, but rather that he is attracted to him personally. It really is of no great account to Hitler if this or that person

were more or less meritorious in this sector of the great fight of the movement. Because, in the last analysis,' by far the greatest part is to be ascribed only to him; he alone will be considered by history as the liberator of Austria. I, therefore, considered it best to accept existing conditions and look for new fertile fields of endeavor in the Party.

"If I should be asked to describe—without personal interest—the role of the Party according to my best conviction, I am ready to do so at any time. For this reason I promised yesterday to submit to you again a short summary, and to make it available for your confidential use. Of this letter and of this abbreviated description I retain the sole copy.

"Heil Hitler! Rainer."

Now, of course, all of these enclosures went to the Defendant Seyss-Inquart, and he had knowledge of the contents of all of them.

It is an historical fact of which the Court will take judicial notice, that Seyss-Inquart was the original Quisling. It so happened that the Norwegian Seyss-Inquart gave his name to posterity as a meaningful name, but all Quislings are alike.

The Tribunal will observe from this that the Rainer report is hardly likely to be tendentious, as counsel says, or to be prejudiced in favor of Defendant Seyss-Inquart's contribution to the Anschluss. It tends, on the contrary, to show that Seyss-Inquart was not quite so important as he might have thought he was. Even so, Rainer gives Seyss-Inquart credit enough.

The Rainer report further tells of the disorganization of the Nazi Party in Austria and of its reconstitution. I now quote the second and third paragraphs of the report, appearing on Pages 3 and 4 of the English text of 812-PS, which is Exhibit USA-61; and I believe it is on Pages 1 and 2 of the original German of the report or Bericht, which is the third part of the document:

"Thus the first stage of battle commenced which ended with the July rising of 1934. The decision for the July rising was right, the execution of it was faulty. The result was a complete destruction of the organization; the loss of entire groups of fighters through imprisonment or flight into the Alt-Reich, and with regard to the political relationship of Germany to Austria, a formal acknowledgment of the existence of the Austrian State by the German Government. With the telegram to Papen, instructing him to reinstitute normal relationships between the two States, the Führer had liquidated the first stage of the battle, and a new method of political penetration was to begin. By order of the Führer the Landes-

leitung Munich was dissolved, and the Party in Austria was left to its own resources.

"There was no acknowledged leader for the entire Party in Austria. New leaderships were forming in the new Gaue. The process was again and again interrupted by the interference of the police; there was no liaison between the formations, and frequently there were two, three, or more rival leaderships. The first evident, acknowledged speaker of almost all the Gaue in Autumn 1934 was Engineer Reinthaler (already appointed Landesbauernführer, leader of the country's farmers, by Hess). He endeavored to bring about a political appeasement by negotiations with the Government with the purpose of giving the NSDAP legal status again, thus permitting its political activities. Simultaneously, Reinthaler started the reconstruction of the illegal political organization at the head of which he had placed Engineer Neubacher."

Next we have secret contacts between German officials, including the Defendant Von Papen, and the Austrian Nazis; the use by the Austrian Nazis of front personalities.

There are two cardinal factors concerning the Nazi organization in Austria which should be borne in mind.

First, although the Führer had, on the surface, cast the Austrian Nazis adrift—as indicated in the document I have just read—in fact, as we shall show, German officials, including Von Papen, maintained secret contact with the Austrian Nazis in line with Hitler's desires. German officials consulted and gave advice and support to the organization of the Austrian Nazis.

In the second place, the Austrian Nazis remained an illegal organization in Austria, organizing for the eventual use of force in a so-called emergency. But in the meantime they deemed it expedient to act behind front personalities, such as the Defendant Seyss-Inquart, who had no apparent taint of illegality in his status in Austria.

Mr. Messersmith relates, in his affidavit, that he got hold of a copy of a document outlining this Nazi program. I quote from Page 8 of Document 1760-PS, USA-57, the following:

"For 2 years following the failure of the July 25 Putsch, the Nazis remained relatively quiet in Austria. Very few terroristic acts occurred during the remainder of 1934 and, as I recall, in 1935 and most of 1936, this inactivity was in accordance with directives from Berlin, as direct evidence to that effect which came to my knowledge at that time, proved. Early in January the Austrian Foreign Minister Berger-

Waldenegg, furnished me a document which I considered accurate in all respects, and which stated:

" 'The German Minister here, Von Papen, on the occasion of his last visit to Berlin, was received three times by Chancellor Hitler for fairly long conversations and he also took this opportunity to call on Schacht and Von Neurath. In these conversations the following instructions were given to him:

" 'During the next 2 years nothing can be undertaken which will give Germany external political difficulties. On this ground, everything must be avoided which could awaken the appearance of Germany interfering in the internal affairs of Austria. Chancellor Hitler will, therefore, also for this reason, not endeavor to intervene in the present prevailing difficult crisis in the National Socialist Party in Austria, although he is convinced that order could be brought into the Party at once through a word from him. This word, however, he will not give for foreign political reasons, being convinced that ends desired by him may be reached also in another way. Naturally, Chancellor Hitler declared to the German Minister here, this does not indicate any disinterestedness in Austria's independence. Also, before everything, Germany cannot for the present withdraw Party members in Austria, and must therefore, in spite of the very real exchange difficulties, make every effort to bring help to the persecuted National Socialist sufferers in Austria.

" 'As a result, Minister of Commerce Schacht finally gave the authorization that from then on, 200,000 marks a month were to be set aside for this end (support of National Socialists in Austria). The control and supervision of this monthly sum was to be entrusted to Engineer Reinthaler, who, through the fact that he alone had control over the money, would have a definite influence on the Party followers. In this way it would be possible to end most quickly and most easily the prevailing difficulties and divisions in the Austrian National Socialist Party.

" 'The hope was also expressed to Herr Von Papen that the recently authorized foundation of German Ortsgruppen of the National Socialist Party in Austria, made up of German citizens in Austria, would be so arranged as not to give the appearance that Germany is planning to interfere in Austrian internal affairs.' "

The report of Gauleiter Rainer to Reich Commissar Bürckel in July 1939 outlines the further history of the Party and the leadership squabbles following the retirement of Reinthaler.

THE PRESIDENT: Do you think this would be a convenient time to break off until 2 o'clock?

MR. ALDERMAN: Yes, sir.

[The Tribunal adjourned until 1400 hours.]

Afternoon Session

MR. ALDERMAN: May it please the Tribunal, I had just referred again to the report of Gauleiter Rainer to Reich Commissioner Bürckel in July 1939, which outlines the further history of the Party and the leadership problem following the retirement of Reinthaler.

In referring to the situation in 1935, he mentioned some of the contacts with the Reich Government, that is, the German Government, in the following terms. I quote from Page 4 of the English text of that report, and I believe from Page 4 of the German text of the Rainer report, which is 812-PS, that is Exhibit USA-61:

"In August some further arrests took place, the victims of which were, apart from the Gauleiter"—Gau leaders—"also Globocnik and Rainer. Schattenfroh then claimed, because of an instruction received from the imprisoned Leopold, to have been made deputy country leader. A group led by engineer Raffelsberger had at this time also established connection with departments of the Alt-Reich (Ministry of Propaganda, German racial agency, *et cetera),* and made an attempt to formulate a political motto in the form of a program for the fighting movement of Austria."

And, again, the Rainer report sets forth the situation a little later in 1936. I quote from Page 6 of the English text, and I think Page 5 of the German text:

"The principles of the construction were:

"The organization is the bearer of the illegal fight and the trustee of the idea to create a secret organization, in a simple manner and without compromise, according to the principle of organizing an elite to be available to the illegal Land Party Council upon any emergency. Besides this, all political opportunities should be taken and all legal people and legal chances should be used without revealing any ties with the illegal organization. Therefore, cooperation between the illegal Party organization and the legal political aides was anchored at the top of the Party leadership. All connections with the Party in Germany were kept secret in accordance with the orders of the Führer. These said that the German State should officially be omitted from the creation of an Austrian NSDAP and that auxiliary centers for propaganda, press, refugees, welfare, *et cetera,* should be established in the foreign countries bordering Austria.

"Hinterleitner already contacted the lawyer Seyss-Inquart, who had connection with Dr. Waechter which originated from

Seyss-Inquart's support of the July uprising. On the other side, Seyss-Inquart had a good position in the legal field and especially well-established relations with Christian Social politicians. Dr. Seyss-Inquart came from the ranks of the Styrian Heimatschutz"—home defense—"and became a Party member when the entire Styrian Heimatschutz was incorporated into the NSDAP. Another personality who had a good position in the legal field was Colonel Glaise-Horstenau who had contacts with both sides. The agreement of 11 July 1936 was strongly influenced by the activities of these two persons of whom Glaise-Horstenau was designed as trustee to the Führer."

The Rainer report thus discloses the dual tactics of the Austrian Nazis during this period of keeping quiet and awaiting developments. They were maintaining their secret contacts with Reich officials, and using native personalities such as Glaise-Horstenau and Seyss-Inquart. The Nazis made good use of such figures, who were more discreet in their activities and could be referred to as nationalists. They presented, supported, and obtained consideration of demands which could not be negotiated by other Nazis like Captain Leopold.

Seyss-Inquart did not hold any public office until January 1937, when he was made Counsellor of State. But Rainer, describing him as a trustworthy member of the Party through the ranks of this Styrian Heimatschutz, points him out as one who strongly influenced the agreement of July 11, 1936. The strategic importance of that agreement will be considered a little later. Rainer's report, as I have said before, was hardly likely to over emphasize the significance of Seyss-Inquart's contribution.

That the Nazis, but not the Austrian Government, did well to trust Seyss-Inquart is indicated by the next document. I propose to offer in evidence Document 2219-PS as Exhibit USA-62. This is a letter dated 14 July 1939, addressed to Field Marshal Göring. The document is a typed carbon of the letter. It ends with the "Heil Hitler" termination, and it is not signed, but we think it was undoubtedly written by Defendant Seyss-Inquart. It was the carbon copy found among Seyss-Inquart's personal files, and such carbon copies kept by authors of letters usually are not signed. On the first page of the letter there appears a note in ink, not indicated in the partial English translation, reading, "Air Mail, 15 July, 1515 hours, Berlin, brought to Göring's office." The main text of the letter consists of a plea for intercession on behalf of one Mühlmann, whose name we shall meet later, and who, unfortunately, got into Bürckel's bad graces. I shall quote the extract part of the

document which has been translated into English, and which starts, I believe, on Page 7 of the German text:

"At present in Vienna, 14 July 1939;

"To the General Field Marshal

"Sir:

"If I may add something about myself, it is the following: I know that I am not of an active fighting nature, unless final decisions are at stake. At this time of pronounced activism" —Aktivismus—"this will certainly be regarded as a fault of my personality. Yet I know that I cling with unconquerable tenacity to the goal in which I believe, that is Greater Germany"—Grossdeutschland—"and the Führer. And if some people are already tired out from the struggle and some have been killed in the fight, I am still around somewhere and ready to go into action. This, after all, was also the development until the year 1938. Until July 1934, I conducted myself as a regular member of the Party. And if I had quietly, in whatever form, paid my membership dues (the first one, according to a receipt, I paid in December 1931) I probably would have been an undisputed, comparatively old fighter and Party member of Austria, but I would not have done any more for the union. I told myself in July 1934 that we must fight this clerical regime on its own ground in order to give the Führer a chance to use whatever method he desired." —I would like to call particular attention to that sentence.— "I told myself that this Austria was worth a mass. I have stuck to this attitude with an iron determination because I and my friends had to fight against the whole political church, the Freemasonry, the Jewry, in short, against everything in Austria. The slightest weakness which we might have displayed would undoubtedly have led to our political annihilation; it would have deprived the Führer of the means and tools to carry out his ingenious political solution for Austria, as became evident in the days of March 1938. I have been fully conscious of the fact that I am following a path which is not comprehensible to the masses and also not to my Party comrades. I followed it calmly and would without hesitation follow it again, because I am satisfied that at one point I could serve the Führer as a tool in his work, even though my former attitude even now gives occasion to very worthy and honorable Party comrades to doubt my trustworthiness. I have never paid attention to such things because I am satisfied with the opinion which the Führer and the men close to him have of me."

That letter was written to one of the men close to him—Field Marshal Göring. I think that suffices to demonstrate Seyss-Inquart as one whose loyalty to Hitler, a foreign dictator, and to the aims of the Nazi conspiracy, led him to fight for the Anschluss with all the means at his disposal.

It is appropriate at this time to offer in evidence a document from the Defendant Von Papen, and to see how he thought the doctrines of National Socialism could be used to effect the aim of the Anschluss. I offer Document 2248-PS as Exhibit USA-63. This document is a letter from Von Papen to Hitler, dated July 27, 1935. It consists of a report entitled, "Review and Outlook 1 Year after the Death of Chancellor Dollfuss." After reviewing the success that the Austrian Government had had in establishing Dollfuss as a martyr, and his principles as the patriotic principles of Austria, Von Papen stated—and I quote the last paragraph of the letter, beginning on Page 1 (Page 146 of the German text):

> "National Socialism must and will overpower the new Austrian ideology. If today it is contended in Austria that the NSDAP is only a centralized Reich German Party and therefore unable to transfer the spirit of thought of National Socialism to groups of people of a different political make-up, the answer must rightly be that the national revolution in Germany could not have been brought about in a different way. But when the creation of the people's community in the Reich will be completed, National Socialism could, in a much wider sense than this is possible through the present Party organization—at least apparently—certainly become the rallying point for all racially German units beyond the borders. Spiritual progress in regard to Austria cannot be achieved today with any centralized tendency. If this recognition would once and for all be stated clearly from within the Reich, then it would easily become possible to effect a break-through into the front of the New Austria. A Nuremberg Party Day designated as 'The German Day' as in old times and the proclamation of a National Socialistic peoples' front would be a stirring event for all beyond the borders of the Reich. Such attacks would win us also the particularistic Austrian circles, whose spokesman, the legitimistic Count Dubsky, wrote in his pamphlet about the Anschluss: 'The Third Reich will be with Austria, or it will not be at all. National Socialism must win it or perish if it is unable to solve this task.'"

We have other reports from Von Papen to Hitler which I shall offer in evidence presently, showing that he maintained covert

contact with the National Socialist groups in Austria. It is certainly interesting that from the very start of his mission, Defendant Von Papen was thinking of ways and means of using the principle of National Socialism for national Germans outside the border of Germany. Papen was working for the Anschluss, although he preferred to use the principles of National Socialism rather than rely on the Party organization as a necessary means of establishing those principles in the German Reich.

Next we have some assurance and reassurance to Austria. The German Government did no more than keep up a pretense of noninterference with Austrian groups. It employed the psychological inducement of providing assurances that it had no designs on Austrian independence. If Austria could find hope for the execution of those assurances, she could find her way clear to the granting of concessions and obtain relief from the economic and internal pressure.

I offer Document 2247-PS in evidence as Exhibit USA-64. It is a letter from Von Papen, while in Berlin, to Hitler, dated May 17, 1935.

Von Papen's letter indicated to Hitler that a forthright credible statement by Germany reassuring Austria, would be most useful for German diplomatic purposes and for the improvement of relationships between Austria and German groups in Austria.

He had a scheme for pitting Schuschnigg and his Christian Social forces against Starhemberg, the Vice Chancellor of Austria, who was backed by Mussolini. Von Papen hoped to persuade Schuschnigg to ally his forces with the NSDAP in order to emerge victorious over Starhemberg. Von Papen indicates that he obtained this idea from Captain Leopold, leader of the illegal National Socialists in Austria.

I quote from his letter, starting at the second paragraph of the second page. This is Von Papen writing to "Mein Führer" Hitler:

> "I suggest that we take an active part in this game. The fundamental idea should be to pit Schuschnigg and his Christian Social forces, who are opposed to a home-front dictatorship, against Starhemberg. The possibility of thwarting the measures arranged between Mussolini and Starhemberg should be afforded to him in such a way that he would submit the offer to the Government of a definitive German-Austrian compromise of interests. According to the convincing opinion of the leader of the NSDAP in Austria, Captain Leopold, the totalitarian principle of the NSDAP in Austria must be replaced in the beginning by a combination of that part of the Christian Social elements which favors the Greater

Germany idea and the NSDAP. If Germany recognizes the national independence of Austria and guarantees full freedom to the Austrian national opposition, then, as a result of such a compromise, the Austrian Government would be formed in the beginning by a coalition of these forces.... A further consequence of this step would be the possibility of the participation of Germany in the Danube Pact, which would take the sting out of its acuteness due to the settlement of relations between Germany and Austria. Such a measure would have a most beneficial influence on the European situation, and especially on our relationship with England.

"One may object that Schuschnigg will hardly be determined to follow such a pattern, that he will rather in all probability immediately communicate our offer to our opponents.

"Of course, one should first of all explore the possibility of setting Schuschnigg against Starhemberg through the use of go-betweens. The possibility exists. If Herr Schuschnigg finally says 'no' and makes our offer known in Rome, then the situation would not be any worse, but on the contrary, the efforts of the Reich Government to make peace with Austria would be revealed, without prejudice to other interests. Therefore, even in the case of refusal this last attempt would be an asset. I consider it completely possible, that in view of the farspread dislike in the Alpine countries of the pro-Italian course, and in view of the sharp tensions between the Federal Government"—Bundesregierung—"Herr Schuschnigg will grasp this last straw, always under the supposition that the offer could not be interpreted as a trap by the opponents, but that it bears all the marks of an actually honest compromise with Austria.

"Assuming success of this step we would again establish our active intervention in central European politics, which, as opposed to the French, Czech, and Russian political maneuvers, would be a tremendous success, both morally and practically.

"Since there are 2 weeks left to accomplish very much work in the way of explorations and conferences, an immediate decision is necessary.

"The Reich Army Minister"—Reichswehrminister—"shares the opinion presented above, and the Reich Foreign Minister"—Reichsaussenminister—"wants to discuss it with you, my Führer."—Signed—"Papen."

In other words, Von Papen wanted a strong assurance and a credible assurance of the preservation of Austria's independence. As he put it, Germany had nothing to lose with what it could always call a mere effort at peace, and she might be able to convince Schuschnigg to establish an Austrian coalition government with the NSDAP. If she did this, she would vastly strengthen her position in Europe. Finally Von Papen urged haste.

Exactly 4 days later, in a Reichstag address, Hitler responded to Von Papen's suggestion, and asserted:

> "Germany neither intends nor wishes to interfere in the internal affairs of Austria, to annex Austria or to conclude an Anschluss."

The British will present a document covering that speech. I merely wanted to use one sentence at this point. It is a sentence quite well known to history.

It is appropriate to take notice of this assurance at this point, and to note that for a complexity of reasons Von Papen suggested, and Hitler announced, a policy completely at variance with their intentions, which had been, and continued to be, to interfere in Austria's internal affairs and to conclude an Anschluss.

There was then a temporary continuance of a quiet pressure policy.

On May 1, 1936, Hitler blandly in a public speech branded as a lie any statement that "tomorrow or the day after" Germany would fall upon Austria. I invite the Court's attention to the version of the speech appearing in the *Völkischer Beobachter,* SD—that is South Germany—2 to 3 May 1936, Page 2, and translated in our Document 2367-PS.

Without offering that document, I ask the Court to take judicial notice of that statement in that well-known speech.

If Hitler meant what he said, it was only in the most literal and misleading sense, that is, that he would not actually fall upon Austria "tomorrow or the day after tomorrow." For the conspirators well knew that the successful execution of their purpose required for a little while longer the quiet policy they had been pursuing in Austria.

I now offer in evidence our Document L-150, "Memorandum of Conversation between Ambassador Bullitt and the Defendant Von Neurath, on 18 May 1936" as Exhibit USA-65. This document unfortunately again appears in your document books in German. Due to an error, it has not been mimeographed in English. German counsel have the German copies.

I shall read from it and at the same time, hand to the interpreter reading the German, a marked copy of a German translation. I might read one sentence from the first paragraph:

"I called on Von Neurath, Minister of Foreign Affairs, on May 18 and had a long talk on the general European situation.

"Von Neurath said that it was the policy of the German Government to do nothing active in foreign affairs until the Rhineland had been 'digested.'

"He explained that he meant until the German fortifications had been constructed on the French and Belgian frontiers, the German Government would do everything possible to prevent, rather than encourage, an outbreak by the Nazis in Austria and would pursue a quiet line with regard to Czechoslovakia. 'As soon as our fortifications are constructed and the countries of Central Europe realize that France cannot enter German territory, all these countries will begin to feel very differently about their foreign policies and a new constellation will develop.' "

I skip then two paragraphs.

"Von Neurath then stated that no understanding had been reached between Germany and Italy, and admitted that the demonstrations of friendship between Germany and Italy were mere demonstrations without basis in reality. He went on to say that at the present time he could see no way to reconcile the conflicting interests of Germany and Italy in Austria. He said that there were three chief reasons why the German Government was urging the Austrian Nazis to remain quiet at the present time:

"The first was that Mussolini had today the greater part of his army mobilized on the Austrian border, ready to strike, and that he would certainly strike if he should have a good excuse.

"The second reason for urging Austrian Nazis to remain quiet for the present was that the Nazi movement was growing stronger daily in Austria. The youth of Austria was turning more and more towards the Nazis, and the dominance of the Nazi Party in Austria was inevitable and only a question of time."

The third reason was that until the German fortifications had been constructed on the French border, an involvement of Germany in war with Italy might lead to a French attack on Germany.

But if Germany was not yet ready for open conflict in Austria, her diplomatic position was vastly improved over 1934, a fact

which influenced Austria's willingness to make concessions to Germany and to come to terms.

I quote again from the Messersmith affidavit, Page 11 of the English text. That is Document 1760-PS.

"Developments in the fall of 1935 and the spring of 1936 gave Germany an opportunity to take more positive steps in the direction of the nazification of Austria. Italy, which had given Austria assurance of support of the most definite character against external German aggression and on one occasion, by mobilizing her forces, had undoubtedly stopped German aggressive action which had been planned against Austria, embarked on her Abyssinian adventure. This and the reoccupation of the Rhineland in 1936 completely upset the balance in Europe. It is quite obvious that after Italy had launched her Abyssinian adventure, she was no longer in any position to counter German aggressive moves against Austria."

This weakening of Austria helped to pave the way for the pact of July 11, 1936. On July 11, 1936 the Governments of Austria and Germany concluded an accord. That will be offered in evidence also by the British Delegation.

I merely ask at this point, that the Tribunal take judicial notice of the fact that such an accord was entered into. The formal part of the agreement of July 11, 1936 will also be proved by our British colleagues. For convenient reference, it will be found in the Document which the British will offer, TC-22, and the substance of it is also contained on Pages 11 and 12 of Mr. Messersmith's affidavit, 1760-PS.

Upon the basis of this fight alone, the agreement looked like a great triumph for Austria. It contains a confusing provision to the effect that Austria in her policy, especially with regard to Germany, would regard herself as a German state, but the other two provisions clearly state that Germany recognizes the full sovereignty of Austria and regards the inner political order of Austria, including the question of Austria and National Socialism, as an internal concern of Austria upon which Germany will exercise neither direct nor indirect influence. But there was much more substance to the day's events than appears in the text of the accord. I refer to Mr. Messersmith's summary as set forth on Page 12 of his affidavit, 1760-PS, as follows:

"Even more important than the terms of the agreement published in the official communiqué, was the contemporaneous informal understanding, the most important provisions of which were that Austria would:

"(1) Appoint a number of individuals enjoying the Chancellor's confidence but friendly to Germany, to positions in the Cabinet; (2) with the devised means to give the national opposition a role in the political life of Austria within the framework of the Patriotic Front; and (3) with amnesty for all Nazis, save those convicted of the most serious offenses."

This amnesty was duly announced by the Austrian Government and thousands of Nazis were released, and the first penetration of Deutsch-National into the Austrian Government was accomplished by the appointment of Dr. Guido Schmidt as Secretary of State for Foreign Affairs and Dr. Edmund Glaise-Horstenau as Minister without portfolio.

I now offer in evidence Document 2994-PS, which is an affidavit by Kurt von Schuschnigg, Foreign Chancellor of Austria, executed at Nuremberg, Germany, on 19 November 1945. I offer this as Exhibit USA-66. The defendants have received German translations of that evidence.

DR. LATERNSER: In the name of the accused, Seyss-Inquart, I wish to protest against the presentation of written evidence by the witness Von Schuschnigg for the following reasons: Today, when a resolution was announced, with respect to the use to be made of the written evidence of Mr. Messersmith, the Court was of the opinion that in a case of very great importance it might possibly take a different view of the matter. With respect to the Austrian conflict this is the case, since Schuschnigg is the most important witness, the witness who was affected at the time in his position as Federal Chancellor. In the case of such an important witness, the principle of direct evidence must be adhered to, in order that the Court be in a position to ascertain the actual truth in this case. The accused and his defense counsel would feel prejudiced in his rights granted by the Charter, should direct evidence be circumvented. I must, therefore, uphold my viewpoint since it can be assumed that the witness Von Schuschnigg will be able to confirm certain facts which are in favor of the accused Seyss-Inquart.

I therefore make the motion to the Court that the written evidence of the witness Von Schuschnigg be not admitted.

THE PRESIDENT: If you have finished, the Tribunal will hear Mr. Alderman.

MR. ALDERMAN: May it please the Tribunal, at this point I am simply proposing to offer this affidavit for the purpose of showing the terms of the secret understanding between the German and Austrian Governments in connection with this accord. It is not for

any purpose to incriminate the Defendant Seyss-Inquart that it is being offered at this point.

DR. LATERNSER: May I add to my motion that the witness, Von Schuschnigg, on 19 November 1945, was questioned in Nuremberg, and that if an interrogation on 19 November was possible, then a short time later—that is now—it ought to be possible to call him before the Court, especially as the interrogation before this court is of special importance.

THE PRESIDENT: The Tribunal will recess now to consider this question.

[A recess was taken.]

THE PRESIDENT: The Tribunal has considered the objection to the affidavit of Von Schuschnigg and upholds the objection.

If the Prosecution desires to call Von Schuschnigg as a witness, it can apply to do so. Equally if the Defense wishes to call Von Schuschnigg as a witness, it can apply to do so. In the event Von Schuschnigg is not able to be produced, the question of affidavit-evidence by Von Schuschnigg being given will be reconsidered.

MR. ALDERMAN: May it please the Tribunal, in view of the strategy and tactics of the Nazis' concessions as indicated in the portion of the Messersmith affidavit that I read, substantial concessions were made by Austria to obtain Germany's diplomatic formal assurance of Austrian independence and non-intervention in Austrian internal affairs.

The release of imprisoned Nazis presented potential police problems, and as Mr. Messersmith pointed out in a 1934 dispatch to the United States State Department quoted on Pages 12 to 13 of his affidavit:

> "Any prospect that the National Socialists might come to power would make it more difficult to obtain effective police and judicial action against the Nazis for fear of reprisals by the future Nazi Government against those taking action against Nazis even in the line of duty. The preservation of internal peace in Austria was less dependent upon Germany's living up to her obligations under the accord."

Next, Germany's continuing program of weakening the Austrian Government. In the pact of 11 July 1936 Germany agreed not to influence directly or indirectly the internal affairs of Austria, including the matter of Austrian National Socialism.

On 16 July 1936, just 5 days later, Hitler violated that provision. I quote from Document 812-PS, which is Exhibit USA-61, the

reports of Gauleiter Rainer to Commissioner Bürckel, all of which were forwarded to the Defendant Seyss-Inquart—Page 6 of the English, and I believe, also Page 6 of the German version.

"At that time the Führer wished to see the leaders of the Party in Austria in order to tell them his opinion on what Austrian National Socialists should do. Meanwhile Hinterleitner was arrested, and Dr. Rainer became his successor and leader of the Austrian Party. On 16 July 1936 Doctor Rainer and Globocnik visited the Führer at the Obersalzberg where they received a clear explanation of the situation and the wishes of the Führer. On 17 July 1936 all illegal Gauleiter met in Anif near Salzburg, where they received a complete report from Rainer on the statement of the Führer and his political instructions for carrying out the fight. At this same conference the Gauleiter received organizational instructions from Globocnik and Hiedler."

Then skipping a paragraph I quote further from this report—in the English that paragraph which I am skipping is omitted, so I am skipping a paragraph in the German version:

"Upon the proposal of Globocnik, the Führer named Lieutenant General"—Gruppenführer—"Keppler as chief of the mixed commission which was appointed, in accordance with the State Treaty of 11 July 1936, to supervise the correct execution of the agreement. At the same time Keppler was given full authority by the Führer for the Party in Austria. After Keppler was unsuccessful in his efforts to cooperate with Leopold, he worked together with Doctor Rainer, Globocnik, Reinthaler as leader of the peasants, Kaltenbrunner"—that is the Defendant Kaltenbrunner in this case —"as leader of the SS, and Doctor Jury as deputy leader of the Austrian Party, as well as with Glaise-Horstenau and Seyss-Inquart."

A new strategy was developed for the Austrian Nazis. Mr. Messersmith describes it briefly, and I quote from Page 13 of his affidavit, 1760-PS:

"The sequel of the agreement was the only one which could have been expected in view of all the facts and previous recorded happenings. Active Nazi operations in Austria were resumed under the leadership of a certain Captain Leopold who, as was known definitely, was in frequent touch with Hitler. The Nazi program was now to form an organization through which the Nazis could carry on their operations openly and with legal sanction in Austria. There were formed in Austria several organizations which had a legal basis, but

which were simply a device by which the Nazis in Austria could organize and later seek inclusion as a unit in the Patriotic Front. The most important of these was the Union of the East Mark,"—Ostmärkische Verein—"the sponsor of which was the Minister of the Interior Glaise-Horstenau. Through the influence of Glaise-Horstenau and pro-Nazi Neustädter-Stürmer, this organization was declared legal by the courts. I made specific mention of the foregoing because it shows the degree to which the situation in Austria had disintegrated as a result of the underground and open Nazi activities directed from Germany."

At this point I offer in evidence Document 2246-PS as Exhibit USA-67, a captured German document which is a report from Von Papen to Hitler dated September 1, 1936. This document is most interesting because it indicates Von Papen's strategy after July 11, 1936 for destroying Austria's independence. Von Papen had taken a substantial step forward with the agreement of July 11. It should be noted incidentally, that after that agreement he was promoted from Minister to Ambassador. Now his tactics were developed in the following terms—I quote the last three paragraphs of his letter of September 1, 1936 to the Führer and Reich Chancellor. Those three paragraphs are all joined as one paragraph in the English text:

"The progress of normalizing relations with Germany at the present time is obstructed by the continued persistence of the Ministry of Security, occupied by the old anti National Socialistic officials. Changes in personnel are therefore of utmost importance. But they are definitely not to be expected prior to the conference on the abolishing of the control of finances at Geneva. The Chancellor of the League has informed Minister Von Glaise-Horstenau of his intention to offer him the portfolio of the Ministry of the Interior. As a guiding principle"—Marschroute (a German word meaning the route of march)—"I recommend on the tactical side, continued, patient, psychological treatment, with slowly intensified pressure directed at changing the regime. The proposed conference on economic relations, taking place at the end of October, will be a very useful tool for the realization of some of our projects. In discussion with Government officials as well as with leaders of the illegal Party (Leopold and Schattenfroh) who conform completely with the agreement of 11 July I am trying to direct the next developments in such a manner to aim at corporative representation of the movement in the Fatherland Front, but nevertheless refraining from putting National Socialists in important positions for

the time being. However, such positions are to be occupied only by personalities having the support and the confidence of the movement. I have a willing collaborator in this respect in Minister Glaise-Horstenau."—Signature—"Papen."

To recapitulate, this report by Von Papen to Hitler discloses the following plan:

(a) Obtaining a change in personnel in the Austrian Ministry of Security in due course;

(b) Obtaining corporative representation of the Nazi movement in the Fatherland Front;

(c) Not putting avowed National Socialists in important positions yet, but using nationalist personalities;

(d) Using economic pressure and patient psychological treatment with slowly intensified pressure directed at changing the regime.

My next subject is Germany's diplomatic preparations for the conquest of Austria.

The program of the Nazi conspiracy with respect to Austria consisted of weakening that country externally and internally by removing its support from without, as well as by penetrating within. This program was of the utmost significance, especially since, as the Court will remember, the events of 25 July 1934 inside Austria were overshadowed in the news of the day by the fact that Mussolini had brought his troops to the Brenner Pass and posed there as a strong protector of his northern neighbor, Austria.

Accordingly, interference in the affairs of Austria and steady increase in the pressure needed to acquire control over that country, required removal of the possibility that Italy or any other country would come to its aid. But the foreign policy program of the conspiracy for the weakening and isolation of Austria was integrated with their foreign policy program in Europe generally.

I should like, therefore, at this juncture, to digress for a moment from the presentation of evidence bearing on Austria alone and to consider with the Tribunal the general foreign policy program of the Nazis. It is not my intention to examine this subject in any detail. Historians and scholars exhausting the archives will have many years of probing all the details and ramifications of European diplomacy during this fateful decade.

It is instead my purpose to mention very briefly the highlights of the Nazis' diplomatic preparation for war.

In this connection I should like to offer to the Tribunal Document Number 2385-PS, a second affidavit of George S. Messer-

smith executed on 30 August 1945 at Mexico City. This has been made available to the defendants in German, as well as in English.

This is a different affidavit from Document Number 1760-PS which was executed August 28. This second affidavit, which I offer as Exhibit USA-68, consists of a presentation of the diplomatic portion of the program of the Nazi Party. To a considerable extent it merely states facts of common knowledge, facts that many people who are generally well informed already know. It also gives us facts which are common knowledge in the circle of diplomats or of students of foreign affairs. It consists of some 11 mimeographed pages, single-spaced. I read first from the third paragraph in the affidavit:

"As early as 1933, while I served in Germany, the German and Nazi contacts which I had in the highest and secondary categories openly acknowledged Germany's ambitions to dominate southeastern Europe from Czechoslovakia down to Turkey. As they freely stated, the objective was territorial expansion in the case of Austria and Czechoslovakia. The professed objectives in the earlier stages of the Nazi regime, in the remainder of southeastern Europe, were political and economic control and they did not, at that time, speak so definitely of actual absorption and destruction of sovereignty. Their ambitions, however, were not limited to southeastern Europe. From the very beginnings of 1933, and even before the Nazis came into power, important Nazis speaking of the Ukraine freely said that 'it must be our granary' and that 'even with southeastern Europe under our control, Germany needs and must have the greater part of the Ukraine in order to be able to feed the people of greater Germany.' After I left Germany in the middle of 1934 for my post in Austria, I continued to receive information as to the German designs in southeastern Europe. In a conversation with Von Papen shortly after his appointment as German Minister to Austria in 1934, Von Papen frankly stated to me that 'southeastern Europe to Turkey is Germany's hinterland and I have been designated to carry through the task of bringing it within the fold. Austria is first on the program.'

"As I learned through my diplomatic colleagues, Von Papen in Vienna and his colleague Von Mackensen in Budapest were openly propagating the idea of the dismemberment and final absorption of Czechoslovakia as early as 1935."

Then, skipping a short paragraph, I resume:

"Immediately after the Nazis came into power, they started a vast rearmament program. This was one of the primary

immediate objectives of the Nazi regime. As a matter of fact the two immediate objectives of the Nazi regime when it came into power, had to be and were, according to their own statements frequently made to me: First, to bring about the complete and absolute establishment of their power over Germany and the German people, so that they would become in every respect willing and capable instruments of the regime to carry through its ends; Second, the establishment of a tremendous armed power within Germany in order that the political and economic program in southeastern Europe and in Europe could be carried through by force if necessary, but probably by a threat of force. It was characteristic that in carrying through this second aim, they emphasized from the very outset the building of an overpowering air force. Göring and Milch often said to me or in my presence that the Nazis had decided to concentrate on air power as the weapon of terror most likely to give Germany a dominant position and the weapon which could be developed the most rapidly and in the shortest time."

Skipping to the end of that paragraph, and resuming at the next:

"At the same time that this rearmament was in progress, the Nazi regime took all possible measures to prepare the German people for war in the psychological sense. Throughout Germany, for example, one saw everywhere German youth of all ages engaged in military exercises, drilling, field maneuvers, practicing the throwing of hand grenades, *et cetera*. In this connection I wrote in an official communication in November 1933, from Berlin as follows:

"'...Everything that is being done in the country today has for its object to make the people believe that Germany is being threatened vitally in every aspect of its life by outside influences and by other countries. Everything is being done to use this feeling to stimulate military training and exercises, and innumerable measures are being taken to develop the German people into a hardy, sturdy race which will be able to meet all comers. The military spirit is constantly growing. It cannot be otherwise. The leaders of Germany today have no desire for peace unless it is a peace which the world makes at the expense of complete compliance with German desires and ambitions. Hitler and his associates really and sincerely want peace for the moment, but only to have a chance to get ready to use force if it is found finally essential. They are preparing their way so carefully that there is not in my mind any question but

that the German people will be with them when they want to use force and when they feel that they have the necessary means to carry through their objects....'"

One further sentence following that I quote:

"Military preparation and psychological preparation were coupled with diplomatic preparation designed so to disunite and isolate their intended victims as to render them defenseless against German aggression."

In 1933 the difficulties facing Germany in the political and diplomatic field loomed large. France was the dominant military power on the continent. She had a system of mutual assistance in the West and in the East.

"The Locarno Pact of 1928, supplemented by the Franco-Belgian Alliance, guaranteed the territorial *status quo* in the West. Yugoslavia, Czechoslovakia, and Romania were allied in the Little Entente and each, in turn, was united with France by mutual assistance pacts. Since 1922 France and Poland had likewise been allied against external aggression. Italy had made plain her special interest in Austrian independence."

Nazi Germany launched a vigorous diplomatic campaign to break up the existing alliances and understandings, to create divisions among the members of the Little Entente and the other eastern European powers.

Specifically, Nazi Germany countered these alliances with promises of economic gain for cooperating with Germany. To some of these countries she offered extravagant promises of territorial and economic rewards. She offered Carinthia in Austria to Yugoslavia. She offered part of Czechoslovakia to Hungary and part to Poland. She offered Yugoslav territory to Hungary at the same time that she was offering land in Hungary to Yugoslavia.

As Mr. Messersmith states in his affidavit—that is 2385-PS, on Page 5:

"Austria and Czechoslovakia were the first on the German program of aggression. As early as 1934, Germany began to woo neighbors of these countries with the promises of a share in the loot. To Yugoslavia in particular they offered Carinthia. Concerning the Yugoslav reaction, I reported at the time:

" 'The major factor in the internal situation in the last week has been the increase in tension with respect to the Austrian Nazi refugees in Yugoslavia... There is very little doubt but that Göring, when he made his trip to various capitals in

southeastern Europe about 6 months ago, told the Yugoslavs that they would get a part of Carinthia when a National Socialist Government came into power in Austria . . . . The Nazi seed sown in Yugoslavia had been sufficient to cause trouble and there are undoubtedly a good many people there who look with a great deal of benevolence on those Nazi refugees who went to Yugoslavia in the days following July 25.'

"Germany made like promises of territorial gains to Hungary and to Poland in order to gain their cooperation or at least their acquiescence in the proposed dismemberment of Czechoslovakia. As I learned from my diplomatic colleagues in Vienna, Von Papen and Von Mackensen in Vienna and in Budapest in 1935 were spreading the idea of division of Czechoslovakia, in which division Germany was to get Bohemia, Hungary to get Slovakia, and Poland the rest. This did not deceive any of these countries for they knew that the intention of Nazi Germany was to take all.

"The Nazi German Government did not hesitate to make inconsistent promises when it suited its immediate objective. I recall the Yugoslav Minister in Vienna saying to me in 1934 or 1935 that Germany had made promises to Hungary of Yugoslav territory while at the same time promising to Yugoslavs portions of Hungarian territory. The Hungarian Minister in Vienna later gave me the same information.

"I should emphasize here in this statement that the men who made these promises were not only the 'dyed in the wool' Nazis but more conservative Germans who already had begun willingly to lend themselves to the Nazi program. In an official dispatch to the Department of State from Vienna dated October 10, 1935, I wrote as follows:

" 'Europe will not get away from the myth that Neurath, Papen, and Mackensen are not dangerous people and that they are "diplomats of the old school." They are in fact servile instruments of the regime and just because the outside world looks upon them as harmless, they are able to work more effectively. They are able to sow discord just because they propagate the myth that they are not in sympathy with the regime.' "

I find that last paragraph very important and worthy of emphasis. In other words, Nazi Germany was able to promote these divisions and increase its own aggressive strength by using as its agents in making these promises men who on outward appearances were merely conservative diplomats. It is true that the Nazis

openly scoffed at any notion of international obligations, as I shall show in a moment. It is true that the real trump in Germany's hand was its rearmament and more than that, its willingness to go to war. And yet the attitude of the various countries was not influenced by those considerations alone.

With all those countries, and I suppose with all persons, we are not always completely rational, we tend to believe what we want to believe, and if an apparently substantial and conservative person like the Defendant Von Neurath, for example, is saying these things, one might be apt to believe them, or at least to act upon that hypothesis. And it would be the more impressive if one were also under the impression that the person involved was not a Nazi and would not stoop to go along with the designs of the Nazis.

Germany's approach toward Great Britain and France was in terms of limited expansion as the price of peace. They signed a naval limitations treaty with England and discussed a Locarno air pact. In the case of both France and England, they limited their statement of intentions and harped on fears of communism and war.

In making these various promises, Germany was untroubled by notions of the sanctity of international obligations. High ranking Nazis, including Göring, Frick, and Frank, openly stated to Mr. Messersmith that Germany would observe her international undertakings only so long as it suited Germany's interest to do so.

I quote from the affidavit, Document 2385-PS, Page 4, beginning on the 10th line:

> "High ranking Nazis with whom I had to maintain official contact, particularly men such as Göring, Goebbels, Ley, Frick, Frank, Darré, and others, repeatedly scoffed at my position as to the binding character of treaties and openly stated to me that Germany would observe her international undertakings only so long as it suited Germany's interest to do so. Although these statements were openly made to me as they were, I am sure, made to others, these Nazi leaders were not really disclosing any secret, for on many occasions they expressed the same idea publicly."

France and Italy worked actively in southeastern Europe to counter Germany's moves.

THE PRESIDENT: Would that be a convenient time to adjourn?

MR. ALDERMAN: Yes, sir.

THE PRESIDENT: We will adjourn until 10 o'clock tomorrow morning.

[The Tribunal adjourned until 29 November 1945 at 1000 hours.]

EIGHTH DAY

Thursday, 29 November 1945

Morning Session

MR. ALDERMAN: May it please the Tribunal. Before I resume the consideration of Mr. Messersmith's second affidavit, Document 2385-PS, Exhibit USA-68, I should like to consider briefly the status of the proof before this Tribunal of the matter stated in the first Messersmith affidavit, introduced by the United States, Document 1760-PS, Exhibit USA-57. You will recall that Mr. Messersmith in that affidavit made the following general statements:

First, that although Nazi Germany stated that she would respect the independence of Austria, in fact she intended from the very beginning to conclude an Anschluss, and that Defendant Von Papen was working toward that end.

Second, that although Nazi Germany pretended, on the surface, to have nothing to do with the Austrian Nazis, in fact she kept up contact with them and gave them support and instruction.

Third, that while they were getting ready for their eventual use of force in Austria, if necessary, the Nazis were using quiet infiltrating tactics to weaken Austria internally, through the use of Christian-front personalities who were not flagrantly Nazi and could be called what they referred to as Nationalist Opposition, and through the device of developing new names for Nazi organizations, so that they could be brought into the Fatherland Front of Austria corporatively—that is as an entire group.

Now let us see briefly what some of our German documents proved, in support of these general statements in the Messersmith affidavit. The excerpts I have already read out of the report from Rainer to Bürckel, enclosed in the letter to Seyss-Inquart, Document 812-PS, Exhibit USA-61, showed:

First, that the Austrian Nazi groups kept up contacts with the Reich although they did it secretly in accordance with instructions from the Führer.

Second, that they continued their organization on a secret basis so as to be ready in what they referred to as an emergency.

Third, that they used persons like Seyss-Inquart and Glaise-Horstenau, who had what they called good legal positions, but who

could be trusted by the Nazis; and that 5 days after the Pact of July 11, 1936 between Germany and Austria, a pact which specifically pledged the German Government not to interfere either directly or indirectly in the internal affairs of Austria, including the question of Austrian National Socialism, the Austrian Nazis met with Hitler at Obersalzberg and received new instructions; and finally, that Hitler then used Keppler, whose name we shall again meet in a short while in a significant manner as his "contact man" with the Austrian Nazis, with full authority to act for the Führer in Austria and to work with the leaders of the Austrian Nazis.

Then we offered Document 2247-PS, Exhibit USA-64, Von Papen's letter to Hitler of May 17, 1935 that showed that Von Papen had been in contact with Captain Leopold and it showed how Von Papen got Hitler to make a solemn promise of Austria's independence in order to further Papen's internal political gain in Austria.

Then we offered Document 2248-PS, Exhibit USA-63, Von Papen's letter of July 27, 1935, which reviewed the situation 1 year after Dollfuss' death, and pointed out how National Socialism could be made the link for the Anschluss and how National Socialism could overcome the Austrian ideologies, and in which he identified himself completely with the National Socialist goal.

We offered Document 2246-PS, Exhibit USA-67, Von Papen's letter to Hitler of September 1, 1936, which showed how Von Papen advised using both economic and continuing psychological pressure; that he had conferences with the leaders of the illegal Austrian Party; that he was trying to direct the next developments in such a way as to get corporative representation of the Nazi movement in the Fatherland Front, and that meanwhile he was not ready to urge that avowed National Socialists be put in prominent positions, but was quite satisfied with collaborators like Glaise-Horstenau.

I think that practically all of the statements in Mr. Messersmith's affidavits have been fully supported by these documents, German documents, which we have introduced. Certain parts of the affidavits cannot be corroborated by documents, in the very nature of things, and I refer specifically to Mr. Messersmith's conversation with the Defendant Von Papen in 1934, which I read to the Tribunal yesterday. But I think those matters are manifestly just as true and just as clear of the defendant's guilt and complicity.

Yesterday I was reading to the Tribunal selected excerpts from Mr. Messersmith's second affidavit, 2385-PS, Exhibit USA-68, relating to the diplomatic preparations for war. Prior to adjournment,

I had read to the Tribunal excerpts which established the following propositions:

First, Nazi Germany undertook a vigorous campaign to break up the diplomatic agreements existing in 1933; first—in the West the Locarno Pact supplemented by the French-Belgium Agreement; second—in the East the Little Entente, Yugoslavia, Czechoslovakia, and Poland, and their respective mutual assistance pacts with France, and the French-Polish Pact; third—as for Austria, the special concern of Italy for her independence, that is for Austrian independence.

In the second place, Nazi Germany countered these alliances with extravagant and sometimes inconsistent promises of territorial gain to countries in southeastern Europe, Yugoslavia, Hungary, and Poland.

In the third place, Mr. Messersmith wrote an official communication to the State Department, pointing out that persons like Von Neurath and Von Papen were able to work more effectively in making these promises and in doing their other work, just because they, and I quote: "propagated the myth that they are not in sympathy with the regime."

In the fourth place, in fact, high-ranking Nazis openly stated that Germany would honor her international obligations only so long as it suited her to do so.

There are two more excerpts which I wish to read from this affidavit:

France and Italy worked actively in southeastern Europe to counter German moves, as I said yesterday. France made attempts to promote an east Locarno pact and to foster an economic accord between Austria and the other Danubian powers. Italy's effort was to organize an economic bloc of Austria, Hungary, and Italy. But Germany foiled these efforts by redoubling her promises of loot, by continuing her armament, and by another very significant strategy, that is the Fifth-Column strategy; that the Nazis stirred up internal dissensions within neighboring countries to disunite and weaken their intended victims.

I read now from Page 7 of the English copy of the second Messersmith affidavit, Document 2385-PS, Exhibit USA-68, the paragraph beginning in the middle of the page:

> "At the same time that Germany held out such promises of reward for cooperation in her program, she stirred up internal dissensions within these countries themselves, and in Austria and Czechoslovakia in particular, all of which was designed so to weaken all opposition and strengthen the pro-

Nazi and Fascist groups as to insure peaceful acquiescence in the German program. Her machinations in Austria I have related in detail, as they came under my direct observation, in a separate affidavit. In Czechoslovakia they followed the same tactics with the Sudeten Germans. I was reliably informed that the Nazi Party spent over 6,000,000 marks in financing the Henlein Party in the elections in the spring of 1935 alone. In Yugoslavia she played on the old differences between the Croats and the Serbs and the fear of the restoration of the Hapsburg in Austria. It may be remarked here that this latter was one of the principal instruments, and a most effective one, which Nazi Germany used, as the fear in Yugoslavia in particular of a restoration of the Hapsburg was very real. In Hungary she played upon the agrarian difficulties and at the same time so openly encouraged the Nazi German elements in Hungary as to provoke the Government of Hungary to demand the recall of Von Mackensen in 1936. In Hungary and in Poland she played on the fear of communism and communist Russia. In Romania she aggravated the existing anti-Semitism, emphasizing the important role of the Jews in Romanian industry and the Jewish ancestry of Lupescu. Germany undoubtedly also financed the fascist Iron Guard through Codreanou.

"Such 'diplomatic' measures reinforced by Germany's vast rearmament program had a considerable effect, particularly in Yugoslavia, Poland, and Hungary, and sufficient at least to deter these countries from joining any combination opposed to German designs, even if not enough to persuade them actively to ally themselves with Nazi Germany.

"Important political leaders of Yugoslavia began to become convinced that the Nazi regime would remain in power and would gain its ends, and that the course of safety for Yugoslavia was to play along with Germany."

I shall not take the time of the Tribunal to read into evidence the detailed official dispatches which Mr. Messersmith sent to the American State Department, showing that Yugoslavia, Hungary, and Poland were beginning to follow the German line.

As for Italy, Germany's initial objective was to sow discord between Yugoslavia and Italy, by promising Yugoslavia Italian territory, particularly Trieste. This was to prevent France from reaching agreement with them and to block an east Locarno pact. On that I quote again from Document 2385-PS, Exhibit USA-68, the second Messersmith affidavit, in the middle of Page 21 of the English version:

"While Italy openly opposed efforts at Anschluss with Austria in 1934, Italian ambitions in Abyssinia provided Germany with the opportunity to sow discord between Italy and France and England, and to win Italy over to acceptance of Germany's program in exchange for German support of Italy's plans in Abyssinia."

That, if the Tribunal please, paved the way for the Austro-German Declaration or Pact of 11 July 1936; and in the fall of 1936 Germany extended the hand of friendship and common purpose to Italy, in an alliance which they called the "Rome-Berlin Axis." This, together with Germany's alliance with Japan, put increasing pressure on England and greatly increased the relative strength of Germany.

And so by means of careful preparation in the diplomatic field, among others, the Nazi conspirators had woven a position for themselves, so that they could seriously consider plans for war and begin to outline time tables, not binding time tables and not specific ones in terms of months and days, but still general time tables, in terms of years, which were the necessary foundation for further aggressive planning, and a spur to more specific planning. And that time table was developed, as the Tribunal has already seen, in the conference of 5 November 1937, contained in our Document Number 386-PS, Exhibit USA-25, the Hossbach minutes of that conference, which I adverted to in detail on Monday last.

In those minutes, we see the crystallization of the plan to wage aggressive war in Europe, and to seize both Austria and Czechoslovakia, and in that order.

In connection with the exposition of the aggression on Austria, I have shown first the purpose of the Nazi conspiracy, with respect to the absorption of Austria, and then the steps taken by them in Austria up to this period, that is, November 1937.

I have also outlined for the Tribunal the general diplomatic preparations of the Nazi conspirators, with respect to their program in Europe generally, and with respect to Austria in particular.

It may now be profitable to reconsider the minutes of the meeting of 5 November 1937, in the light of this more-detailed background. It will be recalled that in that meeting, the Führer insisted that Germany must have more space in Europe. He concluded that the space required must be taken by force; and three different possible cases were outlined for different eventualities but all reaching the conclusion that the problem would certainly have to be solved before 1943 to 1945.

Then there was envisaged the nature of a war in the near future, specifically against Austria and Czechoslovakia. Hitler said that for the improvement of Germany's military and political positions, it must be the first aim of the Nazis, in every case of entanglement by war, to conquer Czechoslovakia and Austria simultaneously in order to remove any threat from the flanks in case of a possible advance westward.

Hitler then considered that the embodiment into Germany of Czechoslovakia and Austria would constitute the conquest of food for from 5 to 6 million people, including the assumption that the comprehensive forced emigration of 1 million people from Austria could be carried out. And he further pointed out that the annexation of the two States to Germany, both militarily and politically, would constitute a considerable relief since they would provide shorter and better frontiers, would free fighting personnel for other purposes, and would make possible the reconstitution of large new German armies.

Insofar as Austria is concerned, those minutes reveal a crystallization in the policy of the Nazi conspirators. It had always been their aim to acquire Austria. At the outset a revolutionary Putsch was attempted, but that failed. The next period was one of surface recognition of the independence of Austria and the use of devious means to strengthen the position of Nazis internally in Austria.

Now, however, it became clear that the need, or the greed, for Austria, in the light of the larger aggressive purpose of the Nazi conspirators was sufficiently great to warrant the use of force in order to obtain Austria with the speed that was designed. In fact, as we shall see later, the Nazis were actually able to secure Austria, after having weakened it internally and removed from it the support of other nations, merely by setting the German military machine into motion and making a threat of force.

The German armies were able to cross the border and secure the country without the necessity of firing a shot. Their careful planning for war and their readiness to use war as an instrument of political action made it possible, in the end, for them to pluck this plum without having to fight a blow for it.

The German High Command had, of course, previously considered preparation against Austria.

I offer in evidence another German document, C-175, as Exhibit USA-69. It, again, is "top secret", with the added legend in German: "Chefsache nur durch Offizier" (matter for the chief only to be delivered through an officer).

This was a top-secret directive of 24 June 1937 of the Reichsminister for War and Commander-in-Chief of the Armed Forces,

General Von Blomberg. The importance of this top-secret directive is indicated by the fact that the carbon copy, received by the Commander-in-Chief of the Navy, was one of only four copies establishing the directive for a unified preparation for war of all the Armed Forces.

This directive from General Von Blomberg states that although the political situation indicates that Germany need not consider an attack from any side it also states that Germany does not intend to unleash a European war. It then states in Part 1, and I quote from Page 2 of the English text, which, I believe, is Page 4, third paragraph, of the German text:

"The intention to unleash a European war is held just as little by Germany. Nevertheless, the politically fluid world situation, which does not preclude surprising incidents, demands a continued preparedness for war by the German Armed Forces: (a) To counter attacks at any time; (b) To enable the military exploitation of politically favorable opportunities, should they occur."

The directive then indicates that there will be certain preparations for war of a general nature. I quote the first two portions of Paragraph 2, on Page 2 of the English text, and I think Page 5 of the German text:

"(2) The preparations of a general nature include:

"(a) The permanent preparedness for mobilization of the German Armed Forces, even before the completion of rearmament, and full preparedness for war.

"(b) The further working on 'mobilization without public announcement' in order to put the Armed Forces in a position to begin a war suddenly and by surprise, both as regards strength and time."

And the directive finally indicates that there might be special preparations for war against Austria. I quote from Part 3, (1) Special Case Otto, Page 4 of the English text, and Page 19 of the German text. "Case Otto", as you will repeatedly see, was the standing code name for aggressive war against Austria. I quote:

"Armed intervention in Austria in the event of her restoring the monarchy.

"The object of this operation will be to compel Austria by armed force to give up a restoration.

"Making use of the domestic political divisions of the Austrian people, the march in will be made in the general direction of Vienna, and will break any resistance."

I should now like to call attention to two conversations, held by United States Ambassador Bullitt with the Defendants Schacht and Göring, in November 1937.

PROFESSOR DR. FRANZ EXNER (Counsel for Defendant Jodl): I should like to state my objection to the manner in which Document C-175 has been treated. This document is a study made by the General Staff, which was conceived to meet many different eventualities of war. It even mentions the possibility that Germany might have to go to war with Spain, and might have to carry out a military attack on her.

Only part of this document was read, the part relating to Austria; and thus the impression was given that a plan had been made to march against Austria, whereas it actually says the German Reich had no intention to attack at that time, but was merely preparing for all eventualities.

I should like to request that the reading of this document be supplemented by reading at least the headings of the paragraphs of this document. If these paragraphs of the document are placed before the Court, it will be seen that this was not a plan to march against Austria, but simply a document preparing for all eventualities.

THE PRESIDENT: Dr. Exner, your objection does not appear to be to the admissibility of the document, but to the weight of the document. The Tribunal has already informed defendants' counsel that they will have an opportunity at the appropriate time, when they come to prepare their defense, to refer to any documents, parts of which have been put in by the Prosecution, and to read such parts as they think necessary then, and to make what criticism they think necessary then.

Your objection is therefore premature, because it does not go to the admissibility of the document. It simply indicates a wish that more of it should be read. You will have the opportunity later to read any parts of the documents which you wish.

MR. ALDERMAN: I suppose, if the Tribunal please, that the fundamental basis of the objection just stated by the distinguished counsel, must have been his theory that Germany never made any plans to invade Austria, and if so, it would seem to follow that Germany never invaded Austria, and perhaps history is mistaken.

I had adverted to two conversations, held by United States Ambassador Bullitt with the Defendant Schacht and the Defendant Göring, in November 1937.

For this purpose, I offer in evidence our Document L-151, offered as Exhibit USA-70. It is a dispatch from Mr. Bullitt, American

Ambassador in Paris, to the American Secretary of State on 23 November 1937.

Now, again, if the Tribunal please, we are embarrassed because that document is not in the document book before the members of the Tribunal. It has been furnished in German translation to the Defense Counsel.

If the Tribunal will permit, I will read from the original exhibit. On top is a letter from Ambassador Bullitt to the Secretary of State, November 23, 1937, stating that he visited Warsaw, stopped in Berlin en route, where he had conversations with Schacht and Göring, among others.

On the conversation with Schacht, I read from Page 2 of the report:

"Schacht said that in his opinion, the best way to begin to deal with Hitler was not through political discussion but through economic discussion. Hitler was not in the least interested in economic matters. He regarded money as filth. It was therefore possible to enter into negotiations with him in the economic domain without arousing his emotional antipathy, and it might be possible through the conversations thus begun to lead him into arrangements in the political and military field, in which he was intensely interested. Hitler was determined to have Austria eventually attached to Germany, and to obtain at least autonomy for the Germans of Bohemia. At the present moment he was not vitally concerned about the Polish Corridor and in his"—that is Schacht's—"opinion, it might be possible to maintain the Corridor, provided Danzig were permitted to join East Prussia, and provided some sort of a bridge could be built across the Corridor, uniting Danzig and East Prussia with Germany."

And for the Defendant Göring's statements to Ambassador Bullitt, I read from the second memorandum, "Memorandum of Conversation between Ambassador Bullitt and General Hermann Göring," on Page 2 of that document, following a part of a sentence which is underlined, just below the middle of the page:

"The sole source of friction between Germany and France was the refusal of France to permit Germany to achieve certain vital national necessities.

"If France, instead of accepting collaboration with Germany, should continue to follow a policy of building up alliances in Eastern Europe to prevent Germany from the achievement of her legitimate aims, it was obvious that there would be conflict between France and Germany.

"I asked Göring what aims especially he had in mind. He replied:

" 'We are determined to join to the German Reich all Germans who are contiguous to the Reich and are divided from the great body of the German race merely by the artificial barriers imposed by the Treaty of Versailles.'

"I asked Göring if he meant that Germany was absolutely determined to annex Austria to the Reich. He replied that this was an absolute determination of the German Government. The German Government, at the present time, was not pressing this matter because of certain momentary political considerations, especially in their relations with Italy. But Germany would tolerate no solution of the Austrian question other than the consolidation of Austria in the German Reich.

"He then added a statement which went further than any I have heard on this subject. He said:

" 'There are schemes being pushed now for a union of Austria, Hungary, and Czechoslovakia, either with or without a Hapsburg at the head of the union. Such a solution is absolutely unacceptable to us, and for us the conclusion of such an agreement would be an immediate *casus belli.*' Göring used the Latin expression *casus belli;* it is not a translation from the German, in which that conversation was carried on.

"I asked Göring if the German Government was as decided in its views with regard to the Germans in Bohemia, as it was with regard to Austria. He replied that there could be only one final solution of this question. The Sudeten Germans must enter the German Reich as all other Germans who lived contiguous to the Reich."

These, if the Tribunal please, are official reports made by the accredited representative of the United States in the regular course of business. They carry with them the guarantee of truthfulness of a report made by a responsible official to his own government, recording contemporaneous conversations and events.

My next subject is pressure and threats resulting in further concessions by Austria: a meeting at Berchtesgaden, 12 February 1938.

As I have stated before, the Austrian Government was laboring under great difficulties imposed by its neighbor. There was economic pressure, including the curtailment of the important tourist trade; and there was what the Defendant Von Papen called "slowly intensified psychological pressure." There were increasing demon-

strations, plots, and conspiracies. Demands were being presented by Captain Leopold and approval of the Nazis was being espoused by the Defendant Seyss-Inquart, the new Councillor of the State of Austria. In this situation, Chancellor Schuschnigg decided to visit Hitler at Berchtesgaden.

The official communiqué of this conference is quite calm; I invite the Tribunal to take judicial notice of it. It is Document 2461-PS, the official German communiqué of the meeting of Hitler and Schuschnigg at Obersalzberg, 12 February 1938, taken from the official *Dokumente der Deutschen Politik,* Volume 6, I, Page 124, Number 21-a.

The communiqué states that the unofficial meeting was caused by the mutual desire to clarify by personal conversation the questions relating to the relationship between the German Reich and Austria.

The communiqué lists among those present:

Schuschnigg and his Foreign Minister Schmidt, Hitler and his Foreign Minister Ribbentrop, and the Defendant Von Papen.

The communiqué concludes on a rather bright note saying, and I quote:

> "Both statesmen are convinced that the measures taken by them constitute at the same time an effective contribution toward the peaceful development of the European situation."

A similar communiqué was issued by the Austrian Government. But in fact, and as I think history well knows, the conference was a very unusual and a very harsh one. Great concessions were obtained by the German Government from Austria. The principal concessions are contained in the official Austrian communiqué of the reorganization of the Cabinet and the general political amnesty, dated 16 February 1938.

That communiqué, as taken from the *Dokumente der Deutschen Politik,* Volume 6, Page 125, Number 21-b, is translated in our Document 2464-PS and I invite the Court's judicial notice of that communiqué.

That communiqué announced a reorganization of the Austrian Cabinet, including, most significantly, the appointment of the Defendant Seyss-Inquart to the position of Minister of Security and Interior, where he would have control of the police. In addition, announcement was made of a general political amnesty to Nazis convicted of crimes.

Two days later another concession was divulged.

I invite the Court's judicial notice to our Document 2469-PS, a translation of the official German and Austrian communiqué con-

cerning the so-called equal rights of Austrian National Socialists in Austria, 18 February 1938, *Dokumente der Deutschen Politik*, Volume 6, I, Page 128, Number 21-d.

That communiqué announced that pursuant to the Berchtesgaden conference, the Austrian National Socialists would be taken into the Fatherland Front, the single legal political party of Austria.

THE PRESIDENT: Did you tell us what exhibit numbers those two documents were?

MR. ALDERMAN: I am sorry, Sir; Document 2469-PS.

THE PRESIDENT: We haven't had that yet. We have had 2461-PS, which is exhibit what?

MR. ALDERMAN: Well, I hadn't read it in. I was asking the Tribunal to take judicial notice of this as an official communiqué.

THE PRESIDENT: You are not going to give it an exhibit number?

MR. ALDERMAN: No, Sir.

THE PRESIDENT: Nor 2469?

MR. ALDERMAN: No, Sir.

In actual fact, great pressure was put on Schuschnigg at Berchtesgaden. The fact that pressure was exerted, and pressure of a military nature involving the threat of the use of troops, can be sufficiently established from captured German documents.

I have our Document 1544-PS, a captured German document, which I offer in evidence as Exhibit USA-71.

This document consists of the Defendant Von Papen's own notes on his last meeting with Schuschnigg, on February 26, 1938. I quote the last two paragraphs of these notes. This is Von Papen speaking, in his own notes:

> "I then introduced into the conversation the widespread opinion that he"—that is, Schuschnigg—"had acted under 'brutal pressure' in Berchtesgaden. I myself had been present and been able to state that he had always and at every point had complete freedom of decision. The Chancellor replied that he had actually been under considerable moral pressure; he could not deny that. He had made notes on the talk which bore that out. I reminded him that despite this talk he had not seen his way clear to make any concessions, and I asked him whether without the pressure he would have been ready to make the concessions he made late in the evening. He answered: 'To be honest, no.'"

And then Von Papen says:

> "It appears to me of importance to record this statement.

"In parting I asked the Chancellor never to deceive himself that Austria could have maintained her status with the help of non-German, European combinations. This question could be decided only according to the interests of the German people. He asserted that he held the same conviction and would act accordingly."

Thus we have, through the words of Von Papen, Schuschnigg's contemporary statement to Papen of the pressure which had been exerted upon him as recorded by Von Papen in an original, contemporaneous entry.

For diplomatic purposes, Papen, who had been at Berchtesgaden, kept up the pretense that there had been no pressure applied.

But the Defendant General Jodl, writing the account of current events in his diary, was much more candid. We are fortunate in having General Jodl's handwritten diary in German script which I can't read. It is our Document 1780-PS, and I offer it in evidence as Exhibit USA-72.

I may say that General Jodl, in interrogations, has admitted that this is his genuine diary in his handwriting.

This diary discloses not only the pressure at Berchtesgaden, but also the fact that for some days thereafter Defendant Keitel and Admiral Canaris worked out a scheme for shamming military pressure in order, obviously, to coerce President Miklas of Austria into ratifying the agreement. It started from Schuschnigg at Berchtesgaden. It will be noted that the approval of President Miklas was needed to ratify the Berchtesgaden agreement; that is, with respect to naming Seyss-Inquart as Minister of the Interior and Security.

And so the Nazi conspirators kept up the military pressure with threats of invasion for some days after the Berchtesgaden conference in order to produce the desired effect on President Miklas.

I quote from General Jodl's diary, the entries for February 11, February 13, and February 14, 1938. The entry of 11 February:

"In the evening and on 12 February General K."—Keitel—"with General Von Reichenau and Sperrle at the Obersalzberg. Schuschnigg together with G. Schmidt are being put under heaviest political and military pressure. At 2300 hours Schuschnigg signs protocol.

"13 February: In the afternoon General K."—Keitel—"asks Admiral C."—Canaris—"and myself to come to his apartment. He tells us that the Führer's order is to the effect that military pressure, by shamming military action, should be kept up until the 15th. Proposals for these deceptive maneuvers are drafted and submitted to the Führer by telephone for approval.

"14 February: At 2:40 o'clock the agreement of the Führer arrives. Canaris went to Munich to the Counter-Intelligence Office VII and initiates the different measures.

"The effect is quick and strong. In Austria the impression is created that Germany is undertaking serious military preparations."

The proposal for deceptive maneuvers reported on by Defendant Jodl are set forth in Document 1775-PS, a captured German document, which I offer in evidence as Exhibit USA-73.

The proposals are signed by the Defendant Keitel. Underneath his signature appears a note that the Führer approved the proposal. In the original document that note is handwritten in pencil.

The rumors which Keitel proposed for the intimidation of Austria make very interesting reading. I quote the first three paragraphs of the suggested order:

"1. To take no real preparatory measures in the Army or Luftwaffe. No troop movements or redeployments.

"2. Spread false but quite credible news which may lead to the conclusion of military preparations against Austria:

"(a) Through V-men"—V-Männer—"in Austria.

"(b) Through our customs personnel"—staff—"at the frontier.

"(c) Through travelling agents.

"3. Such news could be:

"(a) Furloughs are supposed to have been barred in the sector of the VII A.K.

"(b) Rolling stock is being assembled in Munich, Augsburg, and Regensburg.

"(c) Major General Muff, the Military Attaché in Vienna, has been called for a conference to Berlin. As a matter of fact, this is the case."

— That reminds me of a lawyer from my own home town who used to argue a matter at great length, and then he would end up by saying, "and, incidentally, it is the truth."

"(d) The police stations located at the frontier of Austria have called up reinforcements.

"(e) Custom officials report about the imminent maneuvers of the Mountain Brigade"—Gebirgsbrigade—"in the region of Freilassing, Reichenhall, and Berchtesgaden."

The total pattern of intimidation and rumor was effective, for in due course, as we have already seen from the communiqués referred to, President Miklas verified the Berchtesgaden Agreement

which foreshadowed National Socialist Austria and then the events culminating in the actual German invasion on 12 March 1938.

Mr. President, would this be a convenient moment for a recess?

THE PRESIDENT: We will adjourn for 10 minutes.

[A recess was taken.]

MR. ALDERMAN: May it please the Tribunal, I had reached the subject of the events culminating in the German invasion of Austria on 12 March 1938, and first under that, the plebiscite and the preparations for both German and Austrian National Socialists.

The day after his appointment as Minister of the Interior of Austria, Seyss-Inquart flew to Berlin for a conference with Hitler. I invite the Court to take judicial notice of the official German communiqué covering that visit of Seyss-Inquart to Hitler, as it appears in the *Dokumente der Deutschen Politik,* Volume 6, I, Page 128, Number 21-c, a copy of which will be found in our Document 2484-PS.

On March 9, 1938, 3 weeks after Seyss-Inquart had been put in charge of the police of Austria and was in a position to direct their handling of the National Socialists in Austria—3 weeks after the Nazis began to exploit their new prestige and position with their quota of further victories—Schuschnigg made an important announcement.

On March 9, 1938, Schuschnigg announced that he would hold a plebiscite throughout Austria the following Sunday, March 13, 1938. The question to be submitted in the plebiscite was: "Are you for an independent and social, a Christian, German, and united Austria?" A "yes" answer to this question was certainly compatible with the agreement made by the German Government on 11 July 1936 and carried forward at Berchtesgaden on 12 February 1938. Moreover, for a long while the Nazis had been demanding a plebiscite on the question of Anschluss, but the Nazis apparently appreciated the likelihood of a strong "yes" vote on the question put by Schuschnigg in the plebiscite, and they could not tolerate the possibility of such a vote of confidence in the Schuschnigg Government.

In any case, as events showed, they took this occasion to overturn the Austrian Government. Although the plebiscite was not announced until the evening of 9 March, the Nazi organization received word about it earlier in that day. It was determined by the Nazis that they had to ask Hitler what to do about the situation (that is, the Austrian Nazis), and that they would prepare a letter of protest against the plebiscite from Seyss-Inquart to Schuschnigg;

and that, pending Hitler's approval, Seyss-Inquart would pretend to negotiate with Schuschnigg about details of the plebiscite.

This information is all contained in the report of Gauleiter Rainer to Reich Commissioner Bürckel, transmitted as I have already pointed out to Seyss-Inquart, and which has already been received in evidence—our Document 812-PS, Exhibit USA-61.

I quote briefly from Page 7 of the English text, the paragraph beginning on Page 11 of the German original:

"The Landesleitung received word about the planned plebiscite through illegal information services, on 9 March 1938 at 10 a.m. At the session which was called immediately afterwards, Seyss-Inquart explained that he had known about this for only a few hours, but that he could not talk about it because he had given his word to keep silent on this subject. But during the talks he made us understand that the illegal information we received was based on truth, and that in view of the new situation, he had been cooperating with the Landesleitung from the very first moment. Klausner, Jury, Rainer, Globocnik, and Seyss-Inquart were present at the first talks which were held at 10 a.m. There it was decided that:

"First, the Führer had to be informed immediately; secondly, the opportunity for the Führer to intervene must be given to him by way of an official declaration made by Minister Seyss-Inquart to Schuschnigg; and thirdly, Seyss-Inquart must negotiate with the Government until clear instructions and orders were received from the Führer. Seyss-Inquart and Rainer together composed a letter to Schuschnigg, and only one copy of it was brought to the Führer by Globocnik, who flew to him on the afternoon of 9 March 1938.

"Negotiations with the Government were not successful. Therefore, they were stopped by Seyss-Inquart in accordance with the instructions he received from the Führer . . . . On 10 March all the preparations for future revolutionary actions already had been made . . . and the necessary orders given to all unit leaders . . . . During the night of the 10 to 11, Globocnik returned from the Führer with the announcement that the Führer gave the Party freedom of action . . . and that he would back it in everything it did."

—That means the Austrian Nazi Party.

Next, Germany's actual preparations for the invasion and the use of force.

When news of the plebiscite reached Berlin, it started a tremendous amount of activity. Hitler, as history knows, was determined

not to tolerate the plebiscite. Accordingly, he called his military advisers and ordered the preparation of the march into Austria.

On the diplomatic side he started a letter to Mussolini indicating why he was going to march into Austria, and in the absence of the Defendant Ribbentrop (who was temporarily detained in London), the Defendant Von Neurath took over the affairs of the Foreign Office again.

The terse and somewhat disconnected notes in General Jodl's diary give a vivid account of the activities in Berlin. I quote from the entry of 10 March:

"By surprise and without consulting his Ministers, Schuschnigg ordered a plebiscite for Sunday, 13 March, which should bring strong majority for the Legitimists in the absence of plan or preparation. The Führer is determined not to tolerate it.

"This same night, March 9 to 10, he calls for Göring. General Von Reichenau is called back from the Cairo Olympic Committee. General Von Schobert is ordered to come as well as Minister Glaise-Horstenau, who is with the district leader, Gauleiter Bürckel, in the Palatinate. General Keitel communicates the facts at 9:45. He drives to the Reichskanzlei at 10 o'clock. I follow at 10:15, according to the wish of General Von Viebahn, to give him all drafts. 'Prepare Case Otto.'

"1300 hours, General K."—which I think plainly means Keitel—"informs Chief of Operational Staff and Admiral Canaris, Ribbentrop is being detained in London. Neurath takes over the Foreign Office. Führer wants to transmit ultimatum to the Austrian Cabinet. A personal letter is dispatched to Mussolini and the reasons are developed which forced the Führer to take action.

"1830 hours, mobilization order is given to the Commander of the 8th Army (Corps Area 3), 7th and 13th Army Corps, without Reserve Army." (Document Number 1780-PS, Exhibit USA-72).

Now, it is to be noted that Defendant Von Neurath was at this critical hour acting as Foreign Minister. The previous February the Defendant Ribbentrop had become Foreign Minister, and Von Neurath had become President of the Secret Cabinet Council. But in this critical hour of foreign policy the Defendant Ribbentrop was in London handling the diplomatic consequences of the Austrian transaction. As Foreign Minister in this hour of aggression, involving mobilization and movement of troops, use of force and threats to eliminate the independence of a neighboring country, the Defendant Von Neurath resumed his former position in the Nazi conspiracy.

I now offer in evidence our Document C-102 as Exhibit USA-74, a captured German document, top secret, the directive of the Supreme High Command of the Armed Forces, 11 March 1938. This directive by Hitler, initialed by the Defendants Jodl and Keitel, stated Hitler's mixed political and military intentions. I quote Paragraphs 1, 4, and 5 of the directive. First the caption, "The Supreme Command of the Armed Forces" with some initials; "referring to Operation Otto; 30 copies." This is the 11th copy; top secret:

"1. If other measures prove unsuccessful I intend to invade Austria with armed forces to establish constitutional conditions and to prevent further outrages against the pro-German population.

"4. The forces of the Army and Air Force detailed for this operation must be ready for invasion and/or ready for action on 12 March 1938 at the latest from 1200 hours. I reserve the right to give permission for crossing and flying over the frontier and to decide the actual moment for invasion.

"5. The behavior of the troops must give the impression that we do not want to wage war against our Austrian brother; it is in our interest that the whole operation shall be carried out without any violence, but in the form of a peaceful entry welcomed by the population. Therefore any provocation is to be avoided. If, however, resistance is offered it must be broken ruthlessly by force of arms."

I also offer in evidence captured German Document C-103 as Exhibit USA-75. This was an implementing directive issued by the Defendant Jodl, and it provided as follows:

"Top secret; 11 March 1938; 40 copies, sixth copy.

"Special Instruction Number 1 to the Supreme Commander of the Armed Forces Number 427/38,"—with some symbols.—

"Directive for policy toward Czechoslovakian and Italian troops or militia units on Austrian soil.

"1. If Czechoslovakian troops or militia units are encountered in Austria they are to be regarded as hostile.

"2. The Italians are everywhere to be treated as friends, especially as Mussolini has declared himself disinterested in the solution of the Austrian question. The Chief of the Supreme Command of the Armed Forces, by order, Jodl."

Next, the actual events of 11 March 1938 in Austria are available to us in two separate accounts. Although these accounts differ in some minor details, such as precise words used and precise times when they were used, they afford each other almost complete corroboration. We think it appropriate for this Tribunal to have before

it a relatively full account of the way in which the German Government on 11 March 1938 deprived Austria of her sovereignty. First I shall give the report of the day's events in Austria as given by the Austrian Nazis. I refer to Document 812-PS, Exhibit USA-61, a report from Gauleiter Rainer to Reich Commissioner Bürckel, and I shall read from Page 8 of the English version. For the benefit of the German interpreter I am starting following a tabulation: First case, second case, third case, and following the sentence, "Dr. Seyss-Inquart took part in these talks with the Gauleiter."

"On Friday, 11 March, the Minister Glaise-Horstenau arrived in Vienna after a visit with the Führer. After talks with Seyss-Inquart he went to see the Chancellor. At 11:30 a.m. the Landesleitung had a meeting at which Klausner, Rainer, Globocnik, Jury, Seyss-Inquart, Glaise-Horstenau, Fischböck, and Mühlmann participated. Dr. Seyss-Inquart reported on his talks with Dr. Schuschnigg which had ended in a rejection of the proposal of the two ministers.

"In regard to Rainer's proposal, Von Klausner ordered that the Government be presented with an ultimatum, expiring at 1400 hours, signed by legal political 'front' men, including both Ministers and also State Councillors Fishböck and Jury, for the establishment of a voting date in 3 weeks and a free and secret ballot in accordance with the constitution.

"On the basis of written evidence which Glaise-Horstenau had brought with him, a leaflet, to be printed in millions of copies, and a telegram to the Führer calling for help were prepared.

"Klausner placed the leadership of the final political actions in the hands of Rainer and Globocnik. Schuschnigg called a session of all ministers for 2 p.m. Rainer agreed with Seyss-Inquart that Rainer would send the telegram to the Führer and the statement to the population at 3 p.m. and at the same time he would start all necessary actions to take over power unless he received news from the session of the Ministers' Council before that time. During this time all measures had been prepared. At 2:30 Seyss-Inquart telephoned Rainer and informed him that Schuschnigg had been unable to take the pressure and had recalled the plebiscite but that he refused to call a new plebiscite and had ordered the strongest police measures for maintaining order. Rainer asked whether the two Ministers had resigned, and Seyss-Inquart answered, 'No.' Rainer informed the Reichskanzlei through the German Embassy, and received an answer from Göring through the same channels, that the Führer will not consent to partial solutions and that Schuschnigg must resign. Seyss-Inquart was informed

of this by Globocnik and Mühlmann. Talks were held between Seyss-Inquart and Schuschnigg. Schuschnigg resigned. Seyss-Inquart asked Rainer what measures the Party wished taken. Rainer's answer: Reestablishment of the Government by Seyss-Inquart, legalization of the Party, and calling up of the SS and SA as auxiliaries to the police force. Seyss-Inquart promised to have these measures carried out, but very soon the announcement followed that everything might be threatened by the resistance of Miklas, the President. Meanwhile word arrived from the German Embassy that the Führer expected the establishment of a government under Seyss-Inquart with a national majority, the legalization of the Party, and permission for the Legion"—that is the Austrian Legion in Germany—"to return, all within the specified time of 7:30 p.m.; otherwise German troops would cross the border at 8 p.m. At 5 p.m. Rainer and Globocnik, accompanied by Mühlmann, went to the Chancellor's office to carry out this errand.

"Situation: Miklas negotiated with Ender for the creation of a government which included Blacks, Reds, and National Socialists, and proposed the post of Vice-Chancellor to Seyss-Inquart. The latter rejected it and told Rainer that he was not able to negotiate by himself because he was personally involved, and therefore a weak and unfavorable political situation for the cause might result. Rainer negotiated with Zernatto. Director of the Cabinet Huber, Guido Schmidt, Glaise-Horstenau, Legation Councillor Stein, Military Attaché General Muff, and the Gruppenführer Keppler,"—whose name I told you would reappear significantly—"who had arrived in the meantime, were already negotiating. At 7 p.m. Seyss-Inquart entered the negotiations again. Situation at 7:30 p.m.: Stubborn refusal of Miklas to appoint Seyss-Inquart as Chancellor; appeal to the world in case of a German invasion.

"Gruppenführer Keppler explained that the Führer did not yet have an urgent reason for the invasion. This reason must first be created. The situation in Vienna and in the country is most dangerous. It is feared that street fights will break out any moment because Rainer ordered the entire Party to demonstrate at 3 o'clock. Rainer proposed storming and seizing the Chancellor's palace in order to force the reconstruction of the Government. The proposal was rejected by Keppler but was carried out by Rainer after he discussed it with Globocnik. After 8 p.m. the SA and the SS marched in and occupied the Government buildings and all important positions in the city of Vienna. At 8:30 p.m. Rainer, with the approval of

Klausner, ordered all Gauleiter of Austria to take over power in all eight gaue of Austria, with the help of the SS and SA and with instructions that all Government representatives who try to resist, should be told that this action was taken on order of Chancellor Seyss-Inquart.

"With this the revolution broke out, and this resulted in the complete occupation of Austria within 3 hours and the taking over of all important posts by the Party.

"The seizure of power was the work of the Party supported by the Führer's threat of invasion and the legal standing of Seyss-Inquart in the Government. The national result in the form of the taking over of the Government by Seyss-Inquart was due to the actual seizure of power by the Party on one hand, and the political efficiency of Dr. Seyss-Inquart in his territory on the other; but both factors may be considered only in relation to the Führer's decision on 9 March 1938 to solve the Austrian problem under any circumstances and the orders consequently issued by the Führer."

We have at hand another document which permits us virtually to live again through the events of March 11, 1938, and to live through them in most lively and interesting fashion. Thanks to the efficiency of the Defendant Göring and his Luftwaffe organization we have a highly interesting document, obviously an official document from the Luftwaffe headquarters headed as usual "Geheime Reichssache" (top secret). The letterhead is stamped "Reichsluftfahrtministerium Forschungsamt". If I can get the significance of the German, Forschungsamt means the Research Department of Göring's Air Ministry. The document is in a characteristic German folder and on the back it says, "Gespräche Fall Österreich" (Conversations about the Austria Case) and the paper cover on the inside has German script writing, which in time, I will ask the interpreter to read; but it looks to me as if it is "Privat, Geheime Archive," which is Secret Archive, Berlin, "Gespräche Fall Österreich" (Case Austria). I offer that set of documents in the original file as they were found in the Air Ministry, identified as our 2949-PS. I offer them as Exhibit USA-76, and, offering them, I am reminded of Job's outcry, "Oh, that mine enemy would write a book!"

The covering letter in that file, signed by some member of this research organization within the Air Ministry, and addressed to the Defendant Göring, states in substance—well, I will read the English translation. It starts: "To the General Field Marshal. Enclosed I submit, as ordered, the copies of your telephone conversations."

Evidently the defendant wanted to keep a record of important telephone conversations which he had with important persons regarding the Case Austria, and had the transcriptions provided by his Research Department. Most of the conversations transcribed and recorded in the volume I have offered, were conducted by the Defendant Göring, although at least one interesting one was conducted by Hitler. For purposes of convenience our staff has marked these telephone calls in pencil with an identifying letter running from "A" through "Z" and then to "AA." Eleven of these conversations have been determined by a screening process to be relevant to the evidence of this particular time. All the conversations which have been translated have been mimeographed and are included in the document books handed to the defendants. The original binder contains, of course, the complete set of conversations. A very extensive and interesting account of events with which we are much concerned can be developed from quotations from these translated conversations.

I turn now to copies of the telephone conversations. The first group in Part A of the binder took place between Field Marshal Göring, who was identified by the letter "F" for Field Marshal, and Seyss-Inquart, who was identified as "S". The transcript prepared by the Research Institute of the Air Ministry is in part in the language of these two persons and is in part a summary of the actual conversations. I quote from Part A of this binder, and because of the corroborated nature of this transcript and its obvious authenticity, I propose to quote this conversation in full.

"F"—hereafter I shall use Göring and Seyss-Inquart—

"F: 'How do you do, doctor? My brother-in-law, is he with you?'

"Seyss-Inquart: 'No.' "

Thereupon the conversation took approximately the following turn:

"Göring: 'How are things with you? Have you resigned or do you have any news?'

"Seyss-Inquart: 'The Chancellor has cancelled the elections for Sunday, and therefore he has put S' "—Seyss-Inquart—" 'and the other gentlemen in a difficult situation. Besides having called off the elections, extensive precautionary measures are being ordered; among others, curfew at 8 p. m.'

"Göring replied that in his opinion the measures taken by Chancellor Schuschnigg were not satisfactory in any respect. At this moment he could not commit himself officially. Göring will take a clear stand very shortly. In calling off the elections he could see a postponement only, not a change of the present situation which had been brought about by the

behavior of the Chancellor Schuschnigg in breaking the Berchtesgaden agreement.

"Thereafter a conversation took place between Göring and the Führer. Afterwards Göring again telephoned Seyss-Inquart. This conversation was held at 15:05.

"Göring told Seyss-Inquart that Berlin did not agree whatsoever with the decision made by Chancellor Schuschnigg since he did not enjoy any more the confidence of our Government because he had broken the Berchtesgaden Agreement, and therefore further confidence in his future actions did not exist. Consequently the national Ministers, Seyss-Inquart, and the others are being requested immediately to hand in their resignations to the Chancellor, and also to ask the Chancellor to resign. Göring added that if after a period of 1 hour no report had come through, the assumption would be made that Seyss-Inquart would no more be in a position to telephone. That would mean that the gentlemen had handed in their resignations. Seyss-Inquart was then told to send the telegram to the Führer as agreed upon. As a matter of course, an immediate commission by the Federal President for Seyss-Inquart to form a new cabinet would follow Schuschnigg's resignation."

Thus you see that at 2:45 p.m. Göring told Seyss-Inquart over the telephone that it was not enough for Schuschnigg to cancel the elections; and 20 minutes later he telephoned Seyss-Inquart to state that Schuschnigg must resign. That is your second ultimatum. When informed about an hour later that Schuschnigg had resigned he pointed out that in addition it was necessary to have Seyss-Inquart at the head of the Cabinet. Shall I go into another one of these?

THE PRESIDENT: I think we had better adjourn now until 2 o'clock.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

MR. ALDERMAN: May it please the Tribunal, an hour later, following the conversation between Göring and Seyss-Inquart with which I dealt this morning, the Defendant Göring telephoned to Dombrowski in the German Legation in Vienna. I have reference to the telephone conversation marked "TT" on Page 2, Part C, of Document 2949-PS. In that conversation, in the first place, the Defendant Göring showed concern that the Nazi Party and all of its organizations should be definitely legalized promptly. I quote from Page 2 of the transcript:

"Göring: 'Now to go on, the Party has definitely been legalized?'

"Dombrowski: 'But that is—it is not necessary even to discuss that?'

"Göring: 'With all of its organizations.'

"Dombrowski: 'With all of its organizations within this country.'

"Göring: 'In uniform?'

"Dombrowski: 'In uniform.'

"Göring: 'Good.'

"Dombrowski calls attention to the fact that the SA and SS have already been on duty for one-half hour, which means everything is all right."

In addition, Göring stated that the Cabinet—the Austrian Cabinet—must be formed by 7:30 p.m. and he transmitted instructions to be delivered to Seyss-Inquart as to who should be appointed to the Cabinet. I quote from Page 3 of the English text of the transcript of the conversation:

"Göring: 'Yes, and by 7:30 he also must talk with the Führer, and as to the Cabinet, Keppler will bring you the names. One thing I have forgotten: Fischböck must have the Department of Economy and Commerce.'

"Dombrowski: 'That is understood.'

"Göring: 'Kaltenbrunner is to have the Department of Security and Bahr is to have the Armed Forces. The Austrian Army is to be taken by Seyss-Inquart himself and you know all about the Justice Department.'

"Dombrowski: 'Yes, yes.'

"Göring: 'Give me the name.'

"Dombrowski: 'Well, your brother-in-law, isn't that right?' "

—That is Hüber, the brother-in-law of the Defendant Göring.—

"Göring: 'Yes.'

"Dombrowski: 'Yes.'

"Göring: 'That's right, and then also Fischböck.' "

And about 20 minutes later, at 5:26 p.m., Göring was faced with the news that Miklas, the President, was refusing to appoint Seyss-Inquart as Chancellor, and he issued instructions as to the ultimatum that was to be delivered to Miklas. I quote from the telephone conversation between Göring and Seyss-Inquart, in Part E of the folder, the part marked with capital R, Pages 1 and 2:

"Göring: 'Now remember the following: You go immediately, together with Lieutenant General Muff, and tell the Federal President that if the conditions which are known to you are not accepted immediately, the troops who are already stationed at and advancing to the frontier, will march in tonight along the whole line, and Austria will cease to exist. Lieutenant General Muff should go with you and demand to be admitted for conference immediately. Please inform us immediately about Miklas' position. Tell him there is no time now for any joke. Just through the false report we received before, action was delayed, but now the situation is such that tonight the invasion will begin from all the corners of Austria. The invasion will be stopped and the troops will be held at the border only if we are informed by 7:30 that Miklas has entrusted you with the Federal Chancellorship.' " —There follows in the transcript a sentence which is broken up.—" 'M.' '—I suppose that means Lieutenant General Muff.—" 'does not matter whatever it might be, the immediate restoration of the Party with all its organizations.' " —There is again an interruption in the transcript.—" 'And then call out all the National Socialists all over the country. They should now be in the streets; so remember, report must be given by 7:30. Lieutenant General Muff is supposed to come along with you. I shall inform him immediately. If Miklas could not understand it in 4 hours, we shall make him understand it now in 4 minutes.' "

An hour later, at 6:28 p.m., Göring had an extensively interrupted telephone conversation with Keppler and Muff and Seyss-Inquart. When he told Keppler that Miklas had refused to appoint Seyss-Inquart, Göring said—I read from Part H, about a third of the way down on the page:

"Göring: 'Well, then Seyss-Inquart has to dismiss him. Just go upstairs again and just tell him plainly that S. I.' " —Seyss-Inquart—" 'shall call on the National Socialist

guard, and in 5 minutes the troops will march in by my order.' "

After an interruption, Seyss-Inquart came to the telephone and informed the Defendant Göring that Miklas was still sticking to his old viewpoint, although a new person had gone in to talk to him, and there might be definite word in about 10 minutes. The conversation proceeded as follows—I quote from Page 2 of Part H, beginning about the middle of the page:

"Göring: 'Listen, so I shall wait a few more minutes, till he comes back; then you inform me via Blitz conversation in the Reich Chancery as usual, but it has to be done fast. I can hardly justify it as a matter of fact. I am not entitled to do so; if it cannot be done, then you have to take over the power. All right?'

"Seyss-Inquart: 'But if he threatens?'

"Göring: 'Yes.'

"Seyss-Inquart: 'Well, I see; then we shall be ready.'

"Göring: 'Call me via Blitz.' "

In other words, Göring and Seyss-Inquart had agreed on a plan for Seyss-Inquart to take over power if Miklas remained obdurate. The plan which was already discussed involved the use of both the National Socialist forces in Austria and the German troops who had been crossing the borders. Later that night Göring and Seyss-Inquart had another conversation at about 11 o'clock. This was after the ultimatum had expired. Seyss-Inquart informed Göring that Miklas was still refusing to name Seyss-Inquart as Chancellor. The conversation then proceeded as follows, and I quote from Part I of this folder:

"Göring: 'OK' "—What's the German word for OK? Schön.—" 'I shall give the order to march in and then you make sure that you get the power. Notify the leading people about the following which I shall tell you now. Everyone who offers resistance or organizes resistance will immediately be subjected to our court martial, the court martial of our invading troops. Is that clear?'

"Seyss-Inquart: 'Yes.'

"Göring: 'Including leading personalities; it does not make any difference.'

"Seyss-Inquart: 'Yes, they have given the order not to offer any resistance.'

"Göring: 'Yes, it does not matter; the Federal President did not authorize you, and that also can be considered as resistance.'

"Seyss-Inquart: 'Yes.'

"Göring: 'Well, now you are officially authorized.'

"Seyss-Inquart: 'Yes.'

"Göring: 'Well, good luck, Heil Hitler.' "

I am sorry; that conversation took place at 8 o'clock instead of 11. I meant to say 8 o'clock. It is quite interesting to me that when the Defendant Göring was planning to invade a peaceful neighboring state, he planned to try what he referred to as major war criminals before German court martial, the leading personalities.

So much for the conversation with respect to the plan of action for taking over power. Something else very significant was sent on that subject over the telephone, at least so far as those transcripts indicate. But there was another historical event which was discussed over the telephone. I refer to the famous telegram which Seyss-Inquart sent to the German Government requesting the German Government to send troops into Austria to help Seyss-Inquart put down disorder. A conversation held at 8:48 that night between Göring and Keppler proceeded as follows—I read from Page 1 of Part L:

"Göring: 'Well, I do not know yet. Listen, the main thing is that if Inquart takes over all powers of Government he keeps the radio stations occupied.'

"Keppler: 'Well, we represent the Government now.'

"Göring: 'Yes, that's it. You are the Government. Listen carefully. The following telegram should be sent here by Seyss-Inquart. Take the notes: The provisional Austrian Government which, after the dismissal of the Schuschnigg Government, considered it its task to establish peace and order in Austria, sends to the German Government the urgent request for support in its task of preventing bloodshed. For this purpose, it asks the German Government to send German troops as soon as possible.'

"Keppler: 'Well, SA and SS are marching through the streets but everything is quiet. Everything has collapsed with the professional groups.' "

Now let us talk about sending German troops to put down disorder. The SA and the SS were marching in the streets, but everything was quiet. And a few minutes later, the conversation continued thus, reading from Page 2 of Part L:

"Göring: 'Then our troops will cross the border today.'

"Keppler: 'Yes.'

"Göring: 'Well, and he should send the telegram as soon as possible.'

"Keppler: 'Well, send the telegram to Seyss-Inquart in the office of the Federal Chancellor.'

"Göring: 'Please show him the text of the telegram and do tell him that we are asking him—well, he does not even need to send the telegram. All he needs to do is to say, "Agreed."'

"Keppler: 'Yes.'

"Göring: 'He should call me at the Führer's or at my place. Well, good luck. Heil Hitler.'"

Well, of course, he did not need to send the telegram because Göring wrote the telegram. He already had it. It must be recalled that in the first conversation, Part A, held at 3:05 p.m., Göring had requested Seyss-Inquart to send the telegram agreed upon, but now the matter was so urgent that Göring dictated the exact wording of the telegram over the telephone. And an hour later, at 9:54 p.m. a conversation between Dr. Dietrich in Berlin and Keppler in Vienna went on as follows, reading from Part M:

"Dietrich: 'I need the telegram urgently.'

"Keppler: 'Tell the General Field Marshal that Seyss-Inquart agrees.'

"Dietrich: 'This is marvelous. Thank you.'

"Keppler: 'Listen to the radio. News will be given.'

"Dietrich: 'Where?'

"Keppler: 'From Vienna.'

"Dietrich: 'So Seyss-Inquart agrees?'

"Keppler: 'Jawohl.'"

Next the actual order to invade Austria. Communications with Austria were now suspended but the German military machine had been set in motion. To demonstrate that, I now offer in evidence captured Document C-182, offered as Exhibit USA-77, a directive of 11 March 1938 at 2045 hours, from the Supreme Commander of the Armed Forces. This directive, initialed by General Jodl and signed by Hitler, orders the invasion of Austria in view of its failure to comply with the German ultimatum. The directive reads:

"Top secret; Berlin, 11 March 1938, 2045 hours; Supreme Commander of the Armed Forces, OKW,"—with other symbols—"35 copies, 6th copy. C-in-C Navy"—pencil note—"has been informed. Re: Operation Otto. Directive No. 2.

"1) The demands of the German ultimatum to the Austrian Government have not been fulfilled.

"2) The Austrian Armed Forces have been ordered to withdraw before the entry of German troops and to avoid fighting.

The Austrian Government has ceased to function of its own accord.

"3) To avoid further bloodshed in Austrian towns, the entry of the German Armed Forces into Austria will commence, according to Directive No. 1, at daybreak on 12.3.

"I expect the set objectives to be reached by exerting all forces to the full as quickly as possible."

Signed Adolf Hitler; initialed by Jodl and by a name that looks like Warlimont.

And then some interesting communications with Rome to avoid possibility of disaster from that source. At the very time that Hitler and Göring had embarked on this military undertaking, they still had a question mark in their minds, and that was Italy. Italy had massed on the Italian border in 1934 on the occasion of July 25, 1934—the Putsch. Italy had traditionally been the political protector of Austria.

With what a sigh of relief did Hitler hear at 10:25 p.m., that night from Prince Phillipp von Hessen, his Ambassador at Rome, that he had just come back from the Palazzo Venezia, and Mussolini had accepted the whole thing in a very friendly manner. The situation can really be grasped by the rereading of the conversation. The record of the conversation shows the excitement under which Hitler was operating when he spoke over the telephone. It is a short conversation, and I shall read the first half of it from Part N of the transcript of 2949-PS. I am afraid your title Part N may be blurred on the mimeographed copy. "H" is Hessen and "F" is the Führer.

"Hessen: 'I have just come back from Palazzo Venezia. Il Duce accepted the whole thing in a very friendly manner. He sends you his regards. He had been informed from Austria; Schuschnigg gave him the news. He had then said it would be a complete impossibility; it would be a bluff; such a thing could not be done. So he was told that it was unfortunately arranged thus, and it could not be changed any more. Then Mussolini said that Austria would be immaterial to him.'

"Hitler: 'Then please tell Mussolini I will never forget him for this.'

"Hessen: 'Yes.'

"Hitler: 'Never, never, never, whatever happens. I am still ready to make a quite different agreement with him.'

"Hessen: 'Yes, I told him that, too.'

"Hitler: 'As soon as the Austrian affair has been settled, I shall be ready to go with him through thick and thin; nothing matters.'

"Hessen: 'Yes, my Führer.'

"Hitler: 'Listen, I shall make any agreement, I am no longer in fear of the terrible position which would have existed militarily in case we had gotten into a conflict. You may tell him that I do thank him ever so much, never, never shall I forget that.'

"Hessen: 'Yes, my Führer.'

"Hitler: 'I will never forget it, whatever will happen. If he should ever need any help or be in any danger, he can be convinced that I shall stick to him whatever might happen, even if the whole world were against him.'

"Hessen: 'Yes, my Führer.'

The Tribunal will recall the reference in Jodl's diary to the letter which Hitler had sent to Mussolini. It is dated March 11. It may be found in the official publication *Dokumente der Deutschen Politik,* Volume 6, I, Page 135, Number 24-a. I ask the Court to take judicial notice of it, and you will find a translation of it appearing in our Document 2510-PS. In this letter, after stating that Austria had been declining into anarchy, Hitler wrote—and I quote:

"I have decided to re-establish order in my fatherland—order and tranquility—and to give to the popular will the possibility of settling its own fate in unmistakable fashion openly and by its own decision."

He stated that this was an act of self-defense; that he had no hostile intentions towards Italy. And after the invasion, when Hitler was at Linz, Austria, he communicated his gratitude to Mussolini once more in the famous telegram which the world so well remembers. I again cite *Dokumente der Deutschen Politik,* Volume 6, Page 156, Number 29, the translation of the telegram being in our Document 2467-PS, and the document reads: "Mussolini, I will never forget you for this."

We now shift our scene from Vienna to Berlin. We have shifted our scene, I meant, from Vienna to Berlin. It may now be appropriate to come back to Vienna just long enough to recall that late in the evening of March 11, President Miklas did appoint Defendant Seyss-Inquart as Chancellor. The radio announcement of Seyss-Inquart's appointment was made at 11:15 p.m. This is noted in *Dokumente der Deutschen Politik,* Volume 6, I, Page 137, Number 25-a, and a translation of the announcement is in our Document 2465-PS.

Then something had to be done in London to smooth things over there and, accordingly, one more act played on the international scene is set down in the Air Ministry telephone transcript. On Sunday, March 13, 1938, the day after the invasion, Defendant Göring who had been left in Berlin in charge of the Reich by Hitler, who had gone to his fatherland, phoned Defendant Ribbentrop in London. I find this conversation very illuminating as to the way in which these defendants operated, using, if I may employ American vernacular, a kind of international "double talk" to soothe and mislead other nations. I quote from Part 1 of item W of Document 2949-PS:

"Göring:"—speaking to Ribbentrop in London:—" 'As you know, the Führer has entrusted me with the administration of the current government procedures (Führung der Regierungsgeschäfte), and therefore I wanted to inform you. There is overwhelming joy in Austria, that you can hear over the radio.'

"Ribbentrop: 'Yes, it is fantastic, is it not?'

"Göring: 'Yes, the last march into the Rhineland is completely overshadowed. The Führer was deeply moved, when he talked to me last night. You must remember it was the first time that he saw his homeland again. Now, I mainly want to talk about political things. Well, this story that we had given an ultimatum is just foolish gossip. From the very beginning the National Socialist Ministers and the representatives of the people (Volksreferenten) have presented the ultimatum. Later on more and more prominent people of the movement participated, and as a natural result, the Austrian National Socialist Ministers asked us to back them up so that they would not be completely beaten up again and be subjected to terror and civil war. Then we told them we would not allow Schuschnigg to provoke a civil war, under any circumstances. Whether by Schuschnigg's direct order or with his consent, the communists and the Reds had been armed and were already making demonstrations, which were photographed with "Heil Moskau" and so on. Naturally, all these facts caused some danger for Wiener-Neustadt. Then you have to consider that Schuschnigg made his speeches, telling them the Vaterländische Front would fight to the last man. One could not know that they would capitulate like that, and therefore Seyss-Inquart, who already had taken over the Government, asked us to march in immediately. We had already marched up to the frontier before this, since we could not know

whether or not there would be a civil war. These are the actual facts which can be proved by documents.' "

There the Defendant Göring was giving to the Defendant Ribbentrop the proper line that he should take in London as to how to explain what had happened in Austria. Of course, when the Defendant Göring said that his story about this matter could be proved by documents, I don't think he had in mind that his own telephone calls might constitute documents.

Another rather interesting item begins on Page 3 of the English text of this Part W — still Göring talking to Ribbentrop in London. This is at the bottom of the page:

"Göring: 'No, no, I think so, too. Only, I did not know if you had spoken already to these people. I want you once more, —but no, not at all once more, but generally speaking—tell the following to Halifax and Chamberlain: It is not correct that Germany has given an ultimatum. This is a lie by Schuschnigg, because the ultimatum was presented to him by Seyss-Inquart, Glaise-Horstenau, and Jury. Furthermore, it is not true that we have presented an ultimatum to the Federal President, but that it also was given by the others, and as far as I know, just a military attaché came along, asked by Seyss-Inquart, because of a technical question.' " —you will recall that he was a lieutenant general directed by Göring to go along—" 'He was supposed to ask whether, in case Seyss-Inquart would ask for the support of German troops, Germany would grant this request. Furthermore, I want to state that Seyss-Inquart asked us expressly, by phone and by telegram, to send troops because he did not know about the situation in Wiener-Neustadt, Vienna, and so on; because arms had been distributed there. And then he could not know how the Fatherland Front might react since they always had had such a big mouth.'

"Ribbentrop: 'Herr Göring, tell me, how is the situation in Vienna; is everything settled yet?'

"Göring: 'Yes. Yesterday I landed hundreds of airplanes with some companies, in order to secure the airfields, and they were received with joy. Today the advance unit of the 17th division marches in, together with the Austrian troops. Also, I want to point out that the Austrian troops did not withdraw, but that they got together and fraternized immediately with the German troops, wherever they were stationed.' "

These are quite interesting explanations that the ultimatum was by Seyss-Inquart alone and not by Göring; that Lieutenant

General Muff, the military attaché, was along just to answer a technical question, and that Seyss-Inquart asked expressly by telephone and telegram for troops. But, perhaps to understand this conversation, we must try to create again the actual physical scene of the time and place as Göring talked over the phone. I quote eight lines from Page 11 of the English text, about in the middle, Part W:

"Göring: 'Well, do come! I shall be delighted to see you.'

"Ribbentrop: 'I shall see you this afternoon.'

"Göring: 'The weather is wonderful here—blue sky. I am sitting here on my balcony—all covered with blankets—in the fresh air, drinking my coffee. Later on I have to drive in. I have to make the speech. And the birds are twittering, and here and there I can hear over the radio the enthusiasm, which must be wonderful over there.' "—that is, Vienna.

"Ribbentrop: 'That is marvelous.' "

May it please the Tribunal, I have practically come to the end of the material relating to the aggression against Austria. In a moment I shall take up quite briefly the effects of the Anschluss, some of the developments which took place after the German troops marched across the border. What is to come after that is an epilogue, but before developing the epilogue, it may be appropriate to pause briefly for just a moment. I think that the facts which I have related to the Tribunal today show plainly certain things about the defendants involved in the conspiracy, and among the conspirators who particularly took action in the Austrian matter were Von Papen, Seyss-Inquart, Ribbentrop, Von Neurath, and Göring.

First, I think it is plain that these men were dangerous men. They used their power without a bridle. They used their power to override the independence and freedom of others. And they were more than bullies squeezing a smaller foe. They were very sly bullies. They compounded their force with fraud. They coupled threats with legal technicalities and devious maneuvers, wearing a sanctimonious mask to cover their duplicity. I think they are dangerous men.

In accordance with the directive of March 11, our Document C-182, Exhibit USA-77, the German Army crossed the Austrian border at daybreak, 12 March 1938. Hitler issued a proclamation to the German people announcing the invasion, and purporting to justify it. I refer again to *Dokumente der Deutschen Politik*, Volume 6, Page 140, Number 27, "Proclamation of Hitler." The British Government and the French Government filed protests. The German Government and the Austrian National Socialists swiftly secured their grip on Austria. Seyss-Inquart welcomed Hitler at Linz,

and they both expressed their joy over the events of the day. Seyss-Inquart in his speech declared Article 88 of the Treaty of St. Germain inoperative. I refer to the speech of Seyss-Inquart at Linz on 12 March 1938, as contained in the *Dokumente der Deutschen Politik*, Volume 6, I, Page 144, Number 28-a, of which I ask the Tribunal to take judicial notice, and which you will find translated in our Document 2485-PS.

For a view of what was happening in Vienna, I offer in evidence our Document L-292, telegram 70, American Legation, Vienna, to the American Secretary of State, 12 March 1938, and I offer it as Exhibit USA-78. I quote it in full:

"Secretary of State, Washington; March 12, noon.

"Numerous German bombers flying over Vienna dropping leaflets 'National Socialist Germany greets its possession, National Socialist Austria and her new Government in true indivisible Union.'

"Continual rumors small German troop movements into Austria and impending arrival Austrian Legion. SS and SA in undisputed control in Vienna. Police wear swastika arm bands. Schuschnigg and Schmidt rumored arrested. Himmler and Hess here."—Signed—"Wiley."

The law-making machine was put to work immediately on the task of consolidation. For all of this material I shall merely refer the Tribunal to the German sources and to the document number of the English translation, but I think I need not offer these legislative acts in evidence but shall merely invite the Court to take judicial notice of them.

First, Miklas was forced to resign as President. I refer to *Dokumente der Deutschen Politik*, Volume 6, I, Page 147, Number 30-b. Our translation is in our Document 2466-PS.

In this connection the Court will no doubt recall Göring's telephone conversation as shown in Document 2949-PS, that in view of Miklas' delay in appointing Seyss-Inquart, Miklas would be dismissed. Seyss-Inquart became both Chancellor and President.

He then signed a Federal Constitutional Law of March 13, 1938 for the reunion of Austria with the German Reich, which in turn was incorporated into the Reich Statute of Reunion, passed the same day, German law. I cite for that the *Reichsgesetzblatt* 1938, Volume 1, Page 237, Number 21, a translation of which will be found in our Document 2307-PS.

This Federal Constitutional Law declared Austria to be a province of the German Reich. By annexing Austria into the German Reich, Germany violated Article 80 of the Treaty of Versailles,

which provided (by the way, on the Constitutional Law to which I just referred there appear as signatories the following names:

Adolf Hitler, Führer and Reich Chancellor; Göring, General Field Marshal, Reich Minister of Aviation; Frick, Reich Minister of the Interior; Von Ribbentrop, Reich Minister of Foreign Affairs; R. Hess, Deputy Führer.)

By annexing Austria into the German Reich, Germany violated Article 80 of the Treaty of Versailles, which provides, and I quote:

> "Germany acknowledges and will respect the independence of Austria within the frontier, which may be fixed in a treaty between that state and the principal Allied and Associated Powers. She agrees that this independence shall be inalienable." (JN-2)

Similarly, the Austrian action violated Article 88 of the Treaty of St. Germain, which provides:

> "The independence of Austria is inalienable, otherwise than with the consent of the Council of the League of Nations. Consequently, Austria undertakes, in the absence of the consent of the said Council, to abstain from any act which might directly or indirectly or by any means whatever compromise her independence, particularly until her admission to membership of the League of Nations, by participation in the affairs of another power." (JN-3)

This basic Constitutional Law provided for a plebiscite to be held on 10 April 1938 on the question of reunion, but this was a mere formality. The plebiscite could only confirm the union declared in the law. It could not undo Germany's union with, and control over, Austria.

To illustrate the way in which legal consolidation was swiftly assured under conditions of occupation of Austria by troops, it is not necessary to do more than review some of the acts passed within the month.

Hitler placed the Austrian Federal Army under his own command and required all members of the Army to take an oath of allegiance to Hitler as their Supreme Commander. A translation of the pertinent document will be found in our 2936-PS, and I refer to the instruction of the Führer and Reich Chancellor, concerning the Austrian Federal Army, March 13, 1938, *Dokumente der Deutschen Politik,* Volume 6, I, Page 150.

Public officials of the Province of Austria were required to take an oath of office swearing allegiance to Hitler, Führer of the German Reich and people. Jewish officials as defined were not permitted to take the oath.

I refer to a decree of the Führer and Reich Chancellor concerning the administration of oath to the officials of the Province of Austria, March 15, 1938, *Reichsgesetzblatt* 1938, Volume 1, Page 245, Number 24, the translation being in our Document 2311-PS.

Hitler and Frick signed a decree applying to Austria various Reich Laws, including the law of 1933 against the formation of new political parties, and the 1933 Law for the Preservation of Unity of Party and State.

I refer to the first decree of the Führer and Reich Chancellor concerning the introduction of German Reich Law into Austria, 15 March 1938, *Reichsgesetzblatt* 1938, Volume 1, Page 247, Number 25, the translation being in our Document 2310-PS.

Hitler, Frick, and Göring ordered that the Reich Minister of the Interior be the central authority for carrying out the reunion of Austria with the German Reich. I cite the order pursuant to the law concerning the reunion of Austria with the German Reich, March 16, 1938, *Reichsgesetzblatt* 1938, Volume 1, Page 249, Number 25, translated in our 1060-PS.

In connection with Germany's extensive propaganda campaign to insure acceptability of the German regime, it may be noted that Goebbels established a Reich Propaganda Office in Vienna.

I cite the order concerning the establishment of a Reich Propaganda Office in Vienna, March 31, 1938, *Reichsgesetzblatt* 1938, Volume 1, Page 350, Number 46, translated in our Document 2935-PS.

The ballot addressed to soldiers of the former Austrian Army as "German soldiers" asked the voters whether they agreed with the accomplishment and ratification on March 13, 1938 of the reuniting of Austria with Germany.

I cite the second order concerning plebiscite and election for the Greater German Reichstag of March 24, 1938, *Reichsgesetzblatt* 1938, Volume 1, Page 303, translated in our Document 1659-PS.

The ground work was fully laid before the holding of the plebiscite "for German men and women of Austria" promised in the basic law of March 13.

Then, the importance of Austria in further aggression. Could we run that screen up, or is the chart still behind it? Well, the Court will remember the chart.

The seizure of Austria had now formed that lower jaw to the head of the wolf around the head of Czechoslovakia. Germany's desire to consummate the Anschluss with Austria and her determination to execute that aim in the way and at the time that she did—that is, with threat of military force, quickly, and despite political risk—was due to the importance of Austria in her further plans of aggression.

The conference held November 5, 1937, planning for aggressive war in Europe, outlined as objectives in Austria the conquest of food through expulsion of a million people and the effective increase in fighting strength, in part through the improvement in the frontier.

I cite again Document 386-PS, Exhibit USA-25. Austria was to yield to Germany material resources, and moreover, she provided ready cash taken from the Jews and from the Austrian Government.

One of the first orders passed after the Anschluss was an order signed by Hitler, Frick, Schwerin von Krosigk and Schacht for the transfer to the Reich of the assets of the Austrian National Bank. I refer to the order for the transfer of the Austrian National Bank to the Reichsbank, March 17, 1938, *Reichsgesetzblatt* 1938, Volume 1, Page 254, Number 27, translated in our 2313-PS.

Austria also yielded human resources. Three months after the Anschluss there was enacted a decree requiring the 21-year-old men, Austrian men, to report for active military service. I refer to the decree regarding registration for active military service in Austria during 1938, *Reichsgesetzblatt* 1938, Volume 1, Page 634, translated in our 1660-PS.

And the acquisition of Austria improved the military strategic position of the German Army. I invite the Court's attention to a document which I introduced in the case on preparation for aggression, L-172, Exhibit USA-34, which was a lecture delivered by General Jodl, Chief of the German Staff of the Armed Forces, on 7 November 1943, at Munich, to the Gauleiter. Only one page of that lecture appears in this particular document book, and I quote from one paragraph on Page 5 of the English text, which is Page 7 of Jodl's lecture, which reviewed the situation in 1938:

> "The Austrian Anschluss, in its turn, brought with it not only the fulfillment of an old national aim but also had the effect both of reinforcing our fighting strength and of materially improving our strategic position. Whereas, until then the territory of Czechoslovakia had projected in a most menacing way right into Germany—a wasp waist in the direction of France and an air base for the Allies, in particular Russia—Czechoslovakia herself was now enclosed by pincers. Her own strategic position had now become so unfavorable that she was bound to fall a victim to any attack pressed home with vigor before effective aid from the west could be expected to arrive."

The Nazi conspirators were now ready to carry out the second part of this second phase of their aggression and to take over Czechoslovakia.

Logically, if the Tribunal please, we should proceed at this point with the story about Czechoslovakia. For reasons that I explained earlier in the week we have had to change our plans somewhat from a strictly logical order, and the plan at present is that on Monday I shall go forward with the Czechoslovakian part of the aggressive war case.

At this point it is planned by our staff to show a motion picture, and it will take some few minutes to make the physical arrangements in the courtroom, so that if the Court should feel like recessing, those arrangements could be made.

THE PRESIDENT: Could you tell me how long the showing of the picture will take?

MR. ALDERMAN: My understanding is about an hour.

THE PRESIDENT: We will adjourn for 10 minutes then, shall we now, or until the picture is ready?

[A recess was taken.]

COL. STOREY: If the Tribunal please, Sir, supplementing what Mr. Alderman has said, we have had to readjust our presentation to some extent. Tomorrow morning, a witness will be offered for interrogation. Then Mr. Alderman on Monday; and Sir Hartley Shawcross will make the opening statement for the British Empire on Tuesday morning.

The film this afternoon, at the request of defendants' counsel, made in writing to the Court, has been exhibited to defendants' counsel on day before yesterday evening in this courtroom. I personally requested Dr. Dix to convey the invitation to Defense Counsel to witness the film. Eight of them came. Dr. Dix advised me kindly that he would not come unless he was forced to come.

I now present Mr. Dodd, who will have charge of the presentation.

MR. DODD: If it please the Tribunal, the Prosecution for the United States will at this time present to the Tribunal, with its permission, a documentary film on concentration camps. This is by no means the entire proof which the prosecution will offer with respect to the subject of concentration camps, but this film which we offer represents in a brief and unforgettable form an explanation of what the words "concentration camp" imply.

This subject arises appropriately in the narrative of events leading up to the actual outbreak of aggressive war, which, as Mr. Alderman's presentation shows, was planned and prepared by the Nazi conspirators. We propose to show that concentration

camps were not an end in themselves but rather they were an integral part of the Nazi system of government. As we shall show, the black-shirted guards of the SS and the Gestapo stood ranged behind the official pages of the *Reichsgesetzblatt.*

We intend to prove that each and every one of these defendants knew of the existence of these concentration camps; that fear and terror and nameless horror of the concentration camps were instruments by which the defendants retained power and suppressed opposition to any of their policies, including, of course, their plans for aggressive war. By this means they enforced the controls imposed upon the German people, as required to execute these plans, and obliterated freedom in Germany and in the countries invaded and occupied by the armies of the Third Reich.

Finally, we ask the Tribunal in viewing this film to bear in mind the fact that the proof to be offered at a later stage of this Trial will show that on some of the organizations charged in this Indictment lies the responsibility for the origination, the control, and the maintenance of the whole concentration camp system: Upon the SS, the SD—a part of the SS which tracked down the victims—upon the Gestapo, which committed the victims to the camps, and upon other branches of the SS which were in charge of the atrocities committed therein.

Commander James Donovan will introduce the film with a statement explaining its source and its authenticity.

COMMANDER JAMES BRITT DONOVAN, USNR. (Prosecution Counsel for the United States): May it please the Tribunal, I refer to Document Number 2430-PS, concerning the motion picture entitled "Nazi Concentration Camps" and to the affidavits of Commander James B. Donovan, Lieutenant Colonel George C. Stevens, Lieutenant E. R. Kellogg and Colonel Erik Tiebold contained therein. The affidavits of Colonel Stevens and of Lieutenant Kellogg are also contained in the motion picture, and thus will be in the record of the Tribunal. With the permission of the Tribunal, I shall now, however, read into the record those affidavits not appearing in the film.

THE PRESIDENT: In the absence of any objection by the Defense Counsel, we don't think it is necessary to read these formal affidavits.

COMMANDER DONOVAN: Yes, Sir. The United States now offers in evidence an official documentary motion picture report on Nazi concentration camps. This report has been compiled from motion pictures taken by Allied military photographers as the Allied armies in the West liberated the areas in which these camps were

located. The accompanying narration is taken directly from the reports of the military photographers who filmed the camps.

While these motion pictures speak for themselves in evidencing life and death in Nazi concentration camps, proper authentication of the films is contained in the affidavits of the United States Army and Navy officers to which I have referred.

As has been stated, this motion picture has been made available to all defense counsel and they possess copies in their Information Room of the supporting affidavits duly translated.

If the Tribunal please, we shall proceed with the projection of the film, Document 2430-PS, Exhibit USA-79.

[Photographs were then projected on the screen showing the following affidavits while at the same time the voices of the respective affiants were reproduced reading them.]

"I, George C. Stevens, Lieutenant Colonel, Army of the United States, hereby certify:

"1. From 1 March 1945 to 8 May 1945 I was on active duty with the United States Army Signal Corps attached to the Supreme Headquarters, Allied Expeditionary Forces, and among my official duties was direction of the photographing of the Nazi concentration camps and prison camps as liberated by Allied Forces.

"2. The motion pictures which will be shown following this affidavit were taken by official Allied photographic teams in the course of their military duties, each team being composed of military personnel under the direction of a commissioned officer.

"3. To the best of my knowledge and belief, these motion pictures constitute a true representation of the individuals and scenes photographed. They have not been altered in any respect since the exposures were made. The accompanying narration is a true statement of the facts and circumstances under which these pictures were made.

"(Signed) George C. Stevens, Lieutenant Colonel, AUS.

"Sworn to before me this 2nd day of October 1945.

"(Signed) James B. Donovan, Commander, United States Naval Reserve."

"I, E. R. Kellogg, Lieutenant, United States Navy, hereby certify that:

"1. From 1929 to 1941 I was employed at the Twentieth Century Fox Studios in Hollywood, California, as a director of film effects, and am familiar with all photographic techniques. Since 6 September 1941 to the present date of 27 August 1945, I have been on active duty with the United States Navy.

"2. I have carefully examined the motion picture film to be shown following this affidavit and I certify that the images of these excerpts from the original negative have not been retouched, distorted or otherwise altered in any respect and are true copies of the originals held in the vaults of the United States Army Signal Corps. These excerpts comprise 6,000 feet of film selected from 80,000 feet, all of which I have reviewed and all of which is similar in character to these excerpts.

"(Signed) E. R. Kellogg, Lieutenant, United States Navy.

"Sworn to before me this 27 day of August 1945.

"(Signed) John Ford, Captain, United States Navy."

[The film was then shown.]

COL. STOREY: That concludes the presentation.

[The Tribunal adjourned until 30 November 1945 at 1000 hours.]

NINTH DAY

Friday, 30 November 1945

Morning Session

THE PRESIDENT: I call on the Prosecutor for the United States.

MR. JUSTICE JACKSON: Colonel Amen will represent the United States this morning.

COLONEL JOHN HARLAN AMEN (Associate Trial Counsel for the United States): May it please the Tribunal, I propose to call as the first witness for the Prosecution, Major General Erwin Lahousen.

THE PRESIDENT: The Tribunal wish me to state that the evidence of the witness whom you propose to call must be strictly confined to the count with which the United States are dealing, Count One.

COL. AMEN: May I have a moment to discuss that with the Chief Counsel of the United States?

THE PRESIDENT: Yes, certainly.

DR. OTTO NELTE (Counsel for Defendant Keitel): Mr. President, so far as I know the Prosecution...

THE PRESIDENT: Would you state for whom you appear? Do you appear for the Defendant Keitel?

DR. NELTE: Yes. As far as I know, an agreement was reached between the Prosecution and the Defense, to the effect that whenever possible, questions to be brought up in the proceedings on the following day should be announced beforehand. The obvious purpose of this very reasonable understanding was to enable Defense Counsel to discuss forthcoming questions with their clients, and thus to assure a rapid and even progress of the Trial.

I was not informed that the witness Lahousen was to be called by the Prosecution today, nor was I told on what questions he was to be heard.

It was particularly important to know this, because today, I believe, the witness Lahousen was not to be heard on questions connected with the Prosecution's case as presented during the past days.

THE PRESIDENT: That is the contrary of what I said. What I said was that the witness was to be confined to evidence relating

to Count One, which is the Count that has been solely discussed up to the present date.

DR. NELTE: Do you mean, Mr. President, that in order to enable the Defense to cross-examine the witness, there will be a recess after the interrogation by the Prosecution during which Counsel may discuss the questions with their clients? The witness Lahousen, as far as I recall, has never until now been mentioned by the Prosecution.

THE PRESIDENT: Is that all you have to say?

DR. NELTE: Yes.

THE PRESIDENT: I think the Tribunal would like to hear Counsel for the United States upon the agreement which counsel for the Defendant Keitel alleges, namely, an agreement that what was to be discussed on the following day should be communicated to defendants' counsel beforehand.

MR. JUSTICE JACKSON: I know of no agreement to inform defendants' counsel of any witness, nor of his testimony; nor would I want to make such. There are security reasons involved in disclosing to Defense Counsel the names of witnesses, which I don't need to enlarge upon, I am quite sure.

We did advise them that they would be given information as to the documentary matters, and I think that has been kept.

As to witnesses, however, a matter of policy arises. These witnesses are not always prisoners. They have to be treated in somewhat different fashion than prisoners; and the protection of their security is a very important consideration where we are trying this case, in the very hotbed of the Nazi organization with which some of Defense Counsel were identified.

THE PRESIDENT: I think, Mr. Justice Jackson, that that is sufficient. If you tell the Tribunal that there was no such agreement, the Tribunal will, of course, accept that.

MR. JUSTICE JACKSON: I know of nothing of that character, relating to witnesses. That does apply to documents.

We find it very difficult to know just the meaning of the ruling which the Court has just announced. Count One of the Indictment is a conspiracy count, covering the entire substantive part of the Indictment. There are problems, of course, of overlapping, which I had supposed had been worked out between the prosecutors until this morning. It is impossible, trying a conspiracy case, to keep from mentioning the fact that the act, which was the object of the conspiracy, was performed. In fact, that is a part of the evidence of the conspiracy.

I know I don't need to enlarge upon the wide scope of evidence in a conspiracy case. I think, perhaps, the best way to do is to swear the witness, and that the other prosecutors, if they feel their field is being trespassed upon, or the judges, if they feel that we are exceeding, raise the objection specifically; because I don't know how we can separate, particularly on a moment's notice, Count One from the other Counts.

We have tried our best to work out an arrangement that would be fair, as between ourselves and the other prosecutors, but we find it impossible always to please everybody.

With the greatest deference to the ruling of the Court, I would like to suggest that we proceed. I don't know just what the bounds of the ruling might be, but I think the only way we can find out is to proceed, and have specific objections to the specific things which anyone feels have been transgressed; and in doing that, I want to say that we do it with the greatest respect to the ruling, but that we may find ourselves in conflict with it, because of the difficulty of any boundary on the subject.

THE PRESIDENT: Dr. Stahmer?

DR. STAHMER: Mr. President, I must return to the matter raised by Doctor Nelte, namely his statement that before the beginning of the Trial the Defense and the Prosecution reached an agreement to the effect that the next day's program should always be made known to the Defense on the previous day. Such an agreement was actually reached, and I cannot understand why the Prosecution was not informed of it. We considered the possibility and then reached this agreement in a conference with Doctor Kempner, who was acting as our liaison man. I should like further to point out the following:

The Prosecution stated that for security reasons the Defense could not be furnished with the names of witnesses to be called during the next day's proceedings. The press however received, as early as yesterday, information on the witnesses to be called today. We heard of this through representatives of the press this morning and, as far as I know, the information also appeared in today's papers. I cannot understand, therefore, why it was withheld from us, and why we were told that for security reasons, it could not be communicated to us. I think this amounts to a mistrust of the Defense's discretion that is quite unjustified. It is, furthermore, incorrect that we are now receiving documents in good time; they still reach us belatedly. For instance, a document which is to be dealt with in court today was put on our desks only this morning, moreover, in a language which many of the defending

counsel cannot understand, since they do not have complete mastery of English.

As I have already submitted this complaint to the Prosecution in writing, may I ask the Tribunal to reach a decision in this matter as soon as possible.

THE PRESIDENT: Have you finished?

DR. STAHMER: Yes.

MR. JUSTICE JACKSON: It is quite correct that the name of the witness who is to be used today was given to the press. The question of our policy as to giving witnesses' names was submitted to me last night after Court recessed, because we had not been using witnesses heretofore; and I then stated to Colonel Storey that witnesses' names must not be given to the Defense Counsel for security reasons.

He communicated that, I believe, to Doctor Dix. I found that later it had been given to the press. They, of course, have had adequate information therefore as to this witness. However, I am speaking about the policy. We cannot be under an obligation to inform these counsel of the names of witnesses who will be called, who are here in Nuremberg, but not in prison; the situation does not permit of that. Neither can we furnish transcripts of testimony or that sort of thing of witnesses in advance.

Now we want to give the Defense Counsel everything that, in the fair conduct of the Trial, they ought to have. They are now receiving much more than any citizen of the United States gets on trial in the courts of the United States, in some respects, as to advance information and copies and help and service, and I do think that to ask us to disclose to them in advance either the names or substance of testimony—oftentimes the substance would disclose the witness—would not be proper. It was stated yesterday that we would take up a witness today.

THE PRESIDENT: We have already heard two of the counsel on behalf of the Defense. Have you anything to add which is different to what they have said?

DR. DIX: Yes, I believe I can explain a misunderstanding and clarify the whole problem.

Mr. President, as far as I am informed—I do not know what was discussed in my absence—the situation is this:

Though discussions took place, no agreement was reached between the Prosecution and the Defense. There is, as Your Lordship knows, only a decision of the Tribunal regarding documents; that decision is known and I need not repeat. As far as witnesses are concerned I think I may assume that we are all agreed that the

desire of the Defense to know the names of witnesses ahead of time is justified.

The Tribunal must decide to what extent security reasons interfere with this desire, which is in itself justified. That is a matter which the Defense cannot determine. I think I understand Mr. Justice Jackson correctly in saying that if the press is being told what witnesses will appear on the next day, then it is a matter of course that the same information should be given to Defense Counsel at the same time. This was only a series of unhappy circumstances, which can be overcome by mutual understanding and good will.

As I said, I do not know what was agreed upon before I was present here. I cannot therefore contradict my colleague, Dr. Stahmer, in this matter. I think it possible, however, that the misunderstanding arose as a result of the decision of the Court to have documents submitted to us 48 hours in advance and to have the film shown to us beforehand, a decision which led my colleague to the conclusion—and I consider it a justified conclusion—that all matters of this sort were to be submitted to us in advance. We do not, of course, expect to be informed of the contents of the witness' testimony.

After this elucidation I should like to state my request that in the future we be informed as soon as possible which witness is to be called; and I should also like to ask that the security considerations be guided by the knowledge that the Defense as a body is reliable, determined and capable of assisting the Court in reaching its verdict by submitting to the discipline of the proceedings. I ask, therefore, that the cases in which the security officer believes that he should not communicate the name of the witness beforehand, should be reduced to an absolute minimum.

THE PRESIDENT: The Tribunal will consider the submissions which have been made to them on behalf of Defense Counsel with reference to what shall or what shall not be communicated to them. With reference to the witness whom the United States desire to call, they will now be permitted to call him. With reference to what I said about confining his evidence to the first count, the Tribunal thinks that the best course would be for the other prosecutors to have the opportunity now to ask any questions which they think right, and that they may have the opportunity, if they wish, of calling the witness later upon their own counts.

As to cross-examination by the defendants' counsel, that will be allowed to them in the most convenient way possible, so that if they wish to have an opportunity of communicating with their

clients before they cross-examine, they may have the opportunity of doing so. Now we will continue.

COL. AMEN: May we have General Lahousen brought before the Tribunal? What is your name?

ERWIN LAHOUSEN (Witness): Erwin Lahousen.

COL. AMEN: Will you please spell it?

LAHOUSEN: L-a-h-o-u-s-e-n.

COL. AMEN: Will you say this oath after me: "I swear by God —the Almighty and Omniscient—that I will speak the pure truth— and will withhold and add nothing."

[The witness repeated the oath.]

THE PRESIDENT: Don't you think the witness had better sit down?

COL. AMEN: I think he should be allowed to sit down, particularly since he has a heart condition which may be aggravated.

THE PRESIDENT: Very well; you may sit down.

COL. AMEN: Where were you born?

LAHOUSEN: I was born in Vienna.

COL. AMEN: On what date?

LAHOUSEN: On 25 October 1897.

COL. AMEN: What has been your occupation?

LAHOUSEN: I was a professional soldier.

COL. AMEN: Where were you trained?

LAHOUSEN: I was trained in Austria, in the Military Academy in Wiener-Neustadt.

COL. AMEN: Were you immediately commissioned as an officer?

LAHOUSEN: In 1915 I was commissioned as a second lieutenant in the infantry.

COL. AMEN: Did you serve in the first World War?

LAHOUSEN: Yes, as second and first lieutenant in the infantry.

COL. AMEN: Were you promoted from time to time thereafter?

LAHOUSEN: Yes, I was promoted under the normal regulations valid in Austria at the time.

COL. AMEN: By 1930 what rank had you attained?

LAHOUSEN: In 1930 I was a captain.

COL. AMEN: And commencing in 1930 did you take any additional training?

LAHOUSEN: In 1930 I entered the Austrian War School, which corresponds to the Military Academy in the German Army. There I received the training of an officer of the General Staff.

COL. AMEN: How long did this training last?

LAHOUSEN: This training lasted 3 years.

COL. AMEN: In 1933 to what regular army unit were you assigned?

LAHOUSEN: In 1933 I was serving in the Second Austrian Division, that was the Vienna Division.

COL. AMEN: What type of work did you do there?

LAHOUSEN: I was an intelligence officer; that branch of the service for which I was already destined at the end of my training.

COL. AMEN: Did you then receive a further promotion?

LAHOUSEN: I was promoted normally in accordance with the regulations valid in Austria, and roughly at the end of 1933 I became a major. About 1935 or the beginning of 1936 I was transferred to the General Staff, and in June, or at any rate, in the summer of 1936, I became a lieutenant colonel of the Austrian General Staff.

COL. AMEN: And were you assigned to the Intelligence Division at or about that time?

LAHOUSEN: I entered the Austrian Intelligence Division which corresponds technically to the Abwehr in the German Army. I must add that an Intelligence Division was only added to the Austrian Army about this time, i. e. 1936; before that year it did not exist. Since it was planned to re-establish within the framework of the Austrian Federal Army the military Intelligence Division which had ceased to exist after the collapse of the Austrian-Hungarian Empire, I was trained to assist in organizing this division within the framework of the Austrian Army.

COL. AMEN: After being assigned to the Intelligence Division, how were your activities principally directed?

LAHOUSEN: My responsible chief, or more exactly, the responsible chief at that time, was Colonel of the General Staff Böhme. He was the division chief to whom I was subordinate, the Chief of the Intelligence Division, the man to whom I was responsible, from whom I received my orders and instructions; later on it was the Chief of the Austrian General Staff.

THE PRESIDENT: Can't you shorten this, Colonel Amen? We really need not have all this detail.

COL. AMEN: Very good, Sir. It is, however, I think important for the Tribunal to understand more of this information than you ordinarily would by virtue of the fact that he was taken over subsequently to a corresponding position in the German Army, which I did want the Tribunal to appreciate.

Now, will you state to the Tribunal what your principal activities were after being assigned to the Intelligence Division? What information were you interested in and seeking to obtain?

LAHOUSEN: May I repeat—I don't know if I understood you correctly—I was a member of the Austrian Intelligence Division, and not of the German Abwehr.

COL. AMEN: After the Anschluss, what position did you assume?

LAHOUSEN: After the Anschluss I was automatically taken into the High Command of the German Armed Forces, where I did the same work. In that position I was then a member of the Abwehr and my chief was Admiral Canaris.

COL. AMEN: And what was the position of Admiral Canaris?

LAHOUSEN: Canaris was at that time Chief of the German Abwehr, the German Intelligence.

COL. AMEN: And will you explain briefly the responsibility of the principal departments of the Abwehr under Admiral Canaris?

LAHOUSEN: When, after the Anschluss in 1938, I entered the Amt Ausland-Abwehr there were three Abwehr divisions, and the division called "Ausland," and together they formed the organization known as "Ausland-Abwehr." That was the set-up of the organization in my time. How it was composed before I became a member of it, I cannot say exactly.

COL. AMEN: And what were your duties?

LAHOUSEN: First, I automatically came into Abwehr Division I. That was the division concerned with collecting information. It was also called the Secret Information Service. I worked under a divisional chief, the then Colonel in the General Staff Pieckenbrock, whom I knew already from my Austrian past. I also knew Canaris from my time in Austria.

COL. AMEN: Admiral Canaris was your immediate superior?

LAHOUSEN: Admiral Canaris was my immediate superior.

COL. AMEN: From time to time did you act as his personal representative?

LAHOUSEN: Yes, in all cases and on all occasions when his actual deputy—namely, Colonel Pieckenbrock—was not present, or when Canaris, for one reason or another, considered it necessary or advisable to have me appear as his representative.

COL. AMEN: And in this capacity did you have any contact with Field Marshal Keitel?

LAHOUSEN: Yes.

COL. AMEN: Did you also have contact with Jodl?

LAHOUSEN: Yes, occasionally, but to a much lesser extent.

COL. AMEN: And did you occasionally attend conferences at which Herr Hitler was also present?

LAHOUSEN: Yes, I attended a few of the sessions or discussions at which Hitler was present and which he conducted.

COL. AMEN: Will you tell the Tribunal whether the leaders of the Abwehr were in sympathy with Hitler's war program?

LAHOUSEN: I have to make clear in this connection that, at that time, we chiefs in the Abwehr were deeply influenced and captivated by the personality of Canaris, his inner bearing was perfectly clear and unequivocal to a small group of us.

COL. AMEN: And was there a particular group or groups in the Abwehr who worked against the Nazis?

LAHOUSEN: Within the Amt Ausland-Abwehr there were two groups which in their aims and actions were closely connected, but which, nevertheless, must somehow be kept apart.

COL. AMEN: And what were those two groups?

LAHOUSEN: Before I answer this question, I must briefly picture the personality of Canaris, who was the spiritual leader and focus of this group.

COL. AMEN: Please make it as brief as you can.

LAHOUSEN: Canaris was a pure intellect, an interesting, highly individual, and complicated personality, who hated violence as such and therefore hated and abominated war, Hitler, his system, and particularly his methods. In whatever way one may look on him, Canaris was a human being.

COL. AMEN: Now, will you refer back to the two groups of which you spoke and tell me about each of those two groups and their respective memberships?

LAHOUSEN: One might characterize the first of the groups as Canaris' circle. It included the heads of the Amt Ausland-Abwehr:

Canaris himself as its spiritual leader; General Oster, Chief of the Central Division (the head of the Abwehr); my predecessor, Lieutenant Colonel Grosscurth, who had introduced me into the circle of Canaris in Vienna in 1938; the Chief of Abwehr Division I, Colonel Pieckenbrock, who was a close friend of Canaris; Pieckenbrock's successor, Colonel Hansen, who was executed after July; my successor, Colonel Von Freytag Loringhoven, who committed suicide on 26 July 1944, before arrest; also, in a somewhat different way, what applies to all these persons, the Chief of Abwehr Division III, Colonel Von Bentivegni, and then various people in all these divisions, most of whom were executed or imprisoned in connection with the events of July 20, 1944.

I must also name here a man who did not belong to this group but who knew of the actions designed to prevent the execution or issuing of orders for murder and other atrocities, namely, Admiral Bürckner who was Chief of the Ausland Division at that time. Those, in the main, are the leaders of the first group called the Canaris circle.

The second and much smaller group was centered around General Oster as its spiritual leader. This group included members of the Ausland-Abwehr who, as early as 1938—I recognized this clearly by 1939-40 and later on—were actively concerned with schemes and plans designed to remove the originator of this catastrophe, Hitler, by force.

COL. AMEN: What was the purpose of the group to which you belonged; that is, Canaris' inner circle?

LAHOUSEN: On its political motives or aims, I was not informed. I can only reiterate the thoughts and considerations which I, since I was one of Canaris' most intimate confidants, knew well. His inner attitude, which influenced and moulded not only my own actions but also those of the other men whom I mentioned, can be described as follows:

We did not succeed in preventing this war of aggression. The war implies the end of Germany and of ourselves, a misfortune and a catastrophe of very great extent. However, a misfortune even greater than this catastrophe would be a triumph of this system. To prevent this by all possible means was the ultimate aim and purpose of our struggle.

The sense of what I have just said was often expressed by Canaris among the group of which I am speaking.

COL. AMEN: Now, did this group of which you and Canaris were members meet frequently?

LAHOUSEN: I must explain that his group or circle was not to be regarded as an organization in the technical sense, or as a sort of conspirators' club. That would have been quite contradictory to Canaris' nature. It was rather a spiritual organization of men holding the same convictions, of men who had vision and knowledge—their official functions provided them with knowledge —of men who understood each other and acted, but each in his own way and in accordance with his own individuality.

This is also the reason for the differentiation of which I spoke earlier. The same demands were not made on each individual, but Canaris always approached the person whose attitude he knew from personal knowledge to be the most suitable to carry out a certain task.

COL. AMEN: Did you have conversations at these official meetings, at which Canaris expressed his views with respect to the use of force in Poland, for example?

LAHOUSEN: These and similar methods were repeatedly, I may say always, discussed in our circle and they were naturally repudiated by all of us.

COL. AMEN: Do you recall what Canaris said about the Polish war at the time of its commencement?

LAHOUSEN: I very clearly recall the hour at which Canaris entered, completely shattered, to tell us that the situation had after all become serious, although it had earlier appeared as if the matter might still be postponed. He told us then: "This is the end."

COL. AMEN: Did you have conversations with Canaris and the other members of your group with respect to eliminating Nazis from your staff?

LAHOUSEN: While I was still in Vienna, before I took up my post in the OKW, I received instructions from Canaris not to bring any National Socialists with me to his department in Berlin. I was also instructed, whenever possible not to employ Party members or officers sympathizing with the Party in my division, especially in high positions. Thus the actual organization . . .

COL. AMEN: Did Canaris keep a diary?

LAHOUSEN: Yes, Canaris kept a diary. He did so even before the beginning of the war—a diary to which I personally had to contribute and did contribute much.

COL. AMEN: Was it a part of your duties to make entries in that diary?

LAHOUSEN: No, it was not a part of my actual duties, but it naturally fell to me to write entries on the conferences which I attended with Canaris or as his representative.

COL. AMEN: And did you keep copies of the entries which you made in Canaris' diary?

LAHOUSEN: Yes, I kept copies, with Canaris' knowledge and approval.

COL. AMEN: Do you have the original of some of those copies with you here today?

LAHOUSEN: I do not have them on me, but they are available here.

COL. AMEN: And you have refreshed your recollection in reference to those entries?

LAHOUSEN: Yes.

COL. AMEN: What was the purpose of Canaris in keeping such a diary?

LAHOUSEN: As a truthful answer to this question I must repeat what Canaris himself said to me on this subject:

"The purpose and intention of this diary is to portray to the German people and to the world, at some future date, the leaders who are now guiding the fate of their nation."

COL. AMEN: Now, do you recall attending conferences with Canaris at the Führer's headquarters, just prior to the fall of Warsaw?

LAHOUSEN: Canaris and I took part in discussions not in the Führer's headquarters, but in the Führer's special train, shortly before the fall of Warsaw.

COL. AMEN: And having refreshed your recollection from reference to the entries in Canaris' diary, can you tell the Tribunal the date of those conferences?

LAHOUSEN: According to the notes and documents at my disposal it was on September 12, 1939.

COL. AMEN: Did each of these conferences take place on the same day?

LAHOUSEN: The discussions in the Führer's train took place on the same day: September 12, 1939.

COL. AMEN: And was there more than one conference on that day? Were they split into several conferences?

LAHOUSEN: One cannot really call them conferences; they were discussions, conversations, of varying duration.

COL. AMEN: And who was present on this occasion?

LAHOUSEN: Present, regardless of location and time, were the following: Foreign Minister Von Ribbentrop; Keitel, the Chief of the OKW; Jodl, head of the Wehrmacht Operations Staff; Canaris; and myself.

COL. AMEN: Do you see Ribbentrop in this courtroom?

LAHOUSEN: Yes.

COL. AMEN: Will you indicate for the record where he is sitting?

LAHOUSEN: Over there. *[Indicating.]* In the first row, third from the left.

COL. AMEN: Do you also see Keitel in the courtroom?

LAHOUSEN: Yes; he is next to Ribbentrop.

COL. AMEN: Do you also see Jodl in the courtroom?

LAHOUSEN: Yes; he is in the second row, next to Herr Von Papen.

COL. AMEN: Now, to the best of your knowledge and recollection, will you please explain, in as much detail as possible, to the

Tribunal, exactly what was said and what took place at this conference in the Führer's train?

LAHOUSEN: First of all, Canaris had a short talk with Ribbentrop, in which the latter explained the general political aims with regard to Poland and in connection with the Ukrainian question. The Chief of the OKW took up the Ukrainian question in subsequent discussions which took place in his private carriage. These are recorded in the files which I immediately prepared on Canaris' order. While we were still in the carriage of the Chief of the OKW, Canaris expressed his serious misgivings regarding the proposed bombardment of Warsaw, of which he knew. Canaris stressed the devastating repercussions which this bombardment would have in the foreign political field. The Chief of the OKW, Keitel, replied that these measures had been agreed upon directly by the Führer and Göring, and that he, Keitel, had had no influence on these decisions. I quote Keitel's own words here—naturally only after re-reading my notes. Keitel said: "The Führer and Göring are in frequent telephone communication; sometimes I also hear something of what was said, but not always."

Secondly, Canaris very urgently warned against the measures which had come to his knowledge, namely the proposed shootings and extermination measures directed particularly against the Polish intelligentsia, the nobility, the clergy, and in fact all elements which could be regarded as leaders of a national resistance. Canaris said at that time—I am quoting his approximate words: "One day the world will also hold the Wehrmacht, under whose eyes these events occurred, responsible for such methods."

The Chief of the OKW replied—and this is also based on my notes, which I re-read a few days ago—that these things had been decided upon by the Führer, and that the Führer, the Commander-in-Chief of the Army, had let it be known that, should the Armed Forces be unwilling to carry through these measures, or should they not agree with them, they would have to accept the presence at their side of the SS, the SIPO and similar units who would carry them through. A civilian official would then be appointed to function with each military commander. This, in outlines, was our discussion on the proposed shooting and extermination measures in Poland.

COL. AMEN: Was anything said about a so-called "political housecleaning"?

LAHOUSEN: Yes, the Chief of the OKW used an expression which was certainly derived from Hitler and which characterized these measures as "political housecleaning". I recall this expression very clearly, even without the aid of my notes.

COL. AMEN: In order that the record may be perfectly clear, exactly what measures did Keitel say had already been agreed upon?

LAHOUSEN: According to the Chief of the OKW, the bombardment of Warsaw and the shooting of the categories of people which I mentioned before had been agreed upon already.

COL. AMEN: And what were they?

LAHOUSEN: Mainly the Polish intelligentsia, the nobility, the clergy, and, of course, the Jews.

COL. AMEN: What, if anything, was said about possible cooperation with a Ukrainian group?

LAHOUSEN: Canaris was ordered by the Chief of the OKW, who stated that he was transmitting a directive which he had apparently received from Ribbentrop since he spoke of it in connection with the political plans of the Foreign Minister, to instigate in the Galician Ukraine an uprising aimed at the extermination of Jews and Poles.

COL. AMEN: At what point did Hitler and Jodl enter this meeting?

LAHOUSEN: Hitler and Jodl entered either after the discussions I have just described or towards the conclusion of the whole discussion of this subject, when Canaris had already begun his report on the situation in the West; that is, on the news which had meanwhile come in on the reaction of the French Army at the West Wall.

COL. AMEN: And what further discussions took place then?

LAHOUSEN: After this discussion in the private carriage of the Chief of the OKW, Canaris left the coach and had another short talk with Ribbentrop, who, returning to the subject of the Ukraine, told him once more that the uprising should be so staged that all farms and dwellings of the Poles should go up in flames, and all Jews be killed.

COL. AMEN: Who said that?

LAHOUSEN: The Foreign Minister of that time, Ribbentrop, said that to Canaris. I was standing next to him.

COL. AMEN: Is there any slightest doubt in your mind about that?

LAHOUSEN: No. I have not the slightest doubt about that. I remember with particular clarity the somewhat new phrasing that "all farms and dwellings should go up in flames". Previously there had only been talk of "liquidation" and "elimination."

COL. AMEN: Was there any note in Canaris' diary which helped to refresh your recollection on that point also?

LAHOUSEN: No.

COL. AMEN: What, if anything, was said on the subject of France?

LAHOUSEN: On the subject of France a discussion took place in the carriage of the Chief of the OKW, in which Canaris described the situation in the West on the basis of Abwehr reports, and said that in his opinion a great attack was being prepared by the French in the sector of Saarbrücken. Hitler, who had entered the room in the meantime, intervened, took charge of the discussion, rejected in a lively manner the opinion which Canaris had just expressed, and put forward arguments which, looking back now, I must recognize as factually correct.

COL. AMEN: Do you recall whether, in the course of this conference, Ribbentrop said anything about the Jews?

LAHOUSEN: During the conversation, which was taking place in the private coach of the Chief of the OKW, Ribbentrop was not present.

COL. AMEN: Do you recall whether at any time in the course of the conferences Ribbentrop said anything about the Jews?

LAHOUSEN: I repeat, in this discussion, which took place in the coach, no.

COL. AMEN: For purposes of keeping the record straight, whenever you have referred to the Chief of the OKW, you were referring to Keitel?

LAHOUSEN: Yes.

COL. AMEN: Was the Wehrmacht ever asked to furnish any assistance for the Polish campaign?

LAHOUSEN: Yes.

COL. AMEN: Did that undertaking have any special name?

LAHOUSEN: As is recorded in the diary of my division the name of this undertaking which took place just before the Polish campaign, was "Undertaking Himmler".

COL. AMEN: Will you explain to the Tribunal the nature of the assistance required?

LAHOUSEN: The affair on which I am now giving testimony is one of the most mysterious actions which took place within the Amt Ausland-Abwehr. A few days, or sometime before—I believe it was the middle of August—the precise date can be found in the diary of the division—Abwehr Division I, as well as my division, Abwehr Division II, were given the task of providing Polish uniforms and equipment, such as identification cards and so on, for an Undertaking Himmler. This request, according to an entry in the

diary of the division which was kept not by me, but by my adjutant, was received by Canaris from the Wehrmacht Operations Staff or from the National Defense Department. I believe the name of General Warlimont is mentioned.

COL. AMEN: Do you know where this request originated?

LAHOUSEN: Where the request originated I cannot say, I can only say that it reached us in the form of an order. It was, to be sure, an order on which we, the divisional chiefs concerned, already had some misgivings without knowing what, in the last analysis, it meant. The name Himmler, however, spoke for itself, and that is also evident from entries of the diary which record my question why Herr Himmler should come to receive uniforms from us.

COL. AMEN: To whom was the Polish material to be furnished by the Abwehr?

LAHOUSEN: These articles of equipment had to be kept in readiness, and one day some man from the SS or the SD—the name is given in the official war diary of the division—collected them.

COL. AMEN: At what time was the Abwehr informed as to how this Polish material was to be used?

LAHOUSEN: The real purpose was unknown to us then; we do not know its details even today. All of us, however, had the reasonable suspicion that something entirely crooked was being planned; the name of the undertaking was sufficient guarantee for that.

COL. AMEN: Did you subsequently find out from Canaris what in fact had happened?

LAHOUSEN: The actual course of events was the following: When the first Wehrmacht communiqué spoke of the attack of Polish units on German territory, Pieckenbrock, holding the communiqué in his hand, and reading it aloud, observed that now we knew why our uniforms had been needed. On the same day or a few days later, I cannot say exactly, Canaris informed us that people from concentration camps had been disguised in these uniforms and had been ordered to make a military attack on the radio station at Gleiwitz. I cannot recall whether any other locality was mentioned. Although we were extremely interested, particularly General Oster, to know details of this action, that is, where it had occurred and what had happened—actually we could well imagine it, but we did not know how it was carried out—I cannot even today say exactly what happened.

COL. AMEN: Did you ever find out what happened to the men from the concentration camps who wore the Polish uniforms and created the incident?

LAHOUSEN: It is strange. This matter has always held my interest, and even after the capitulation I spoke about these matters with an SS Hauptsturmführer—he was a Viennese—in the hospital in which both of us were staying, and I asked him for details on what had taken place. The man—his name was Birckel—told me: "It is odd, that even our circles heard of this matter only very much later, and then only by intimation." He added: "So far as I know, even all members of the SD who took part in that action were put out of the way, that is, killed." That was the last I heard of this matter.

COL. AMEN: Do you recall attending a meeting in 1940 at which the name of Weygand was under discussion?

LAHOUSEN: Yes.

COL. AMEN: Do you happen to recall the particular month in which this discussion took place?

LAHOUSEN: The discussion took place in the winter of 1940, either in November or December, as far as I recall. I have recorded the precise date in my personal notes, with the knowledge and desire of Canaris.

COL. AMEN: To the best of your knowledge and recollection, who was present?

LAHOUSEN: The three divisional chiefs and the Chief of the Ausland Division, Admiral Bürckner, were present nearly every day during the daily conference on the situation.

COL. AMEN: What were you told at this meeting by Canaris?

LAHOUSEN: In this discussion Canaris revealed to us that already for some considerable time Keitel had put pressure on him to arrange for the elimination of the French Marshal, Weygand; and that naturally I—that is my division—would be charged with the execution of this task.

COL. AMEN: When you say "elimination", what do you mean?

LAHOUSEN: Killing.

COL. AMEN: What was Weygand doing at this time?

LAHOUSEN: Weygand was, so far as I recall, in North Africa at that time.

COL. AMEN: What was the reason given for attempting to kill Weygand?

LAHOUSEN: The reason given was the fear that Weygand together with the unconquered part of the French Army might form a center of resistance in North Africa. That, in the main, was the reason, as far as I remember today; it may be that there were other contributing factors.

COL. AMEN: After you were so informed by Canaris, what else was said at this meeting?

LAHOUSEN: This request which was first put to the military Abwehr so openly and in such an undisguised form by a representative of the Armed Forces, was decidedly and indignantly rejected by all those present. I, myself, as the person most involved, since my division was expected to carry out this task, indicated flatly before all present that I had not the slightest intention of executing this order. My division and my officers are prepared to fight but they are neither a murderers' organization nor murderers.

COL. AMEN: What then did Canaris say?

LAHOUSEN: Canaris said: "Calm down. We'll have a word together later," or something to that effect.

COL. AMEN: Did you then talk it over later with Canaris?

LAHOUSEN: When the other gentlemen had left the room, I spoke with Canaris alone and he told me immediately: "It is quite obvious that this order will not only not be carried out, but it will not even be communicated to anybody else," and that, in fact, happened.

COL. AMEN: Were you subsequently questioned as to whether you had carried out this order?

LAHOUSEN: On one occasion when Canaris was reporting to Keitel, and I was present, Keitel mentioned the subject to me, and asked me what had happened or what had been done in this matter up to now. The date of this incident was recorded in my notes, on Canaris' suggestion and with his knowledge.

COL. AMEN: What reply did you make to Keitel?

LAHOUSEN: I cannot, of course, recall my precise words, but one thing is certain; I did not answer that I had no intention of carrying out this order. That I could not tell him, and did not tell him; otherwise, I would not be sitting here today. Probably, as in many similar cases, I replied that it was very difficult but everything possible would be done, or something of that sort. Naturally, I cannot recall my precise words.

COL. AMEN: Incidentally, are you the only one of this intimate Canaris group who is still alive today?

LAHOUSEN: I believe I am at least one of the very few. Possibly Pieckenbrock is still alive; perhaps Bentivegni, who, however, did not belong to the inner circle. Most of the others were liquidated as a result of the events on July 20.

COL. AMEN: I have another subject to take up now. In 1941 did you attend a conference at which General Reinecke was present?

LAHOUSEN: Yes.

COL. AMEN: Who was General Reinecke?

LAHOUSEN: General Reinecke was at that time Chief of the General Wehrmacht Department, which was part of the OKW.

COL. AMEN: Do you recall the approximate date of that meeting?

LAHOUSEN: It was roughly in the summer of 1941, shortly after the beginning of the Russian campaign; approximately in July.

COL. AMEN: To the best of your knowledge and recollection, will you state exactly who was present at that conference?

LAHOUSEN: At this conference, which is also recorded in the notes taken for Canaris, and in which I participated as his representative, the following were present:

General Reinecke as the presiding officer, Obergruppenführer Müller of the RSHA, Colonel Breuer representing the Prisoners of War Department, and I, as the representative of Canaris, of Ausland-Abwehr.

COL. AMEN: Will you explain who Müller was and why he was at this meeting?

LAHOUSEN: Müller was a division chief in the Reich Central Office of Security (RSHA), and took part in the session because he was responsible for putting into practice the measures for the treatment of Russian prisoners of war, that is, responsible for carrying out the executions.

COL. AMEN: Will you explain who Colonel Breuer was and why he was there?

LAHOUSEN: Colonel Breuer was the representative of the Prisoners of War Department. I do not know of which organization this department was a part at that time. At any rate, he was responsible in the OKW for questions relating to prisoners of war.

COL. AMEN: What was the purpose of this conference?

LAHOUSEN: The purpose of this conference was to examine the orders issued for the treatment of Russian prisoners of war, to comment on them, to explain and account for them on reasonable grounds.

COL. AMEN: Did you learn from the conversation at this conference what the substance of these orders under discussion was?

LAHOUSEN: These orders dealt with two groups of measures which were to be taken. Firstly, the killing of Russian commissars, and secondly, the killing of all those elements among the Russian prisoners of war who, under a special selection program of the

SD, could be identified as thoroughly bolshevized or as active representatives of the Bolshevist ideology.

COL. AMEN: Did you also learn from the conversation what the basis for these orders was?

LAHOUSEN: The basis for these orders was explained by General Reinecke in its outlines as follows:

The war between Germany and Russia is not a war between two states or two armies, but between two ideologies—namely, the National Socialist and the Bolshevist ideology. The Red Army soldier must not be looked upon as a soldier in the sense of the word applying to our western opponents, but as an ideological enemy. He must be regarded as the archenemy of National Socialism, and must be treated accordingly.

COL. AMEN: Did Canaris tell you why he was selecting you to go to this conference?

LAHOUSEN: Canaris gave me two or perhaps three reasons and motives for ordering me to this conference although he himself was in Berlin. Firstly, he wanted to avoid a meeting with Reinecke, for whom, as the prototype of the ever-compliant National Socialist general, he possessed strong personal dislike. Secondly, he told and directed me to attempt through factual argument—that is, through appeals to reason—to have this brutal and completely senseless order rescinded or at least mitigated in its effects as far as possible. He also selected me for tactical reasons since he, as department chief, could by no means be as outspoken as I, who, thanks to my subordinate position, could use much stronger language. Thirdly, he was well acquainted with my personal attitude, especially in this question, an attitude which I manifested wherever possible during my many journeys and trips to the front where I witnessed ill-treatment of prisoners of war. This is also clearly recorded in my notes.

COL. AMEN: Did Canaris and the other members of your group have a particular name for Reinecke?

LAHOUSEN: Not only among our group but also in other circles, he was known as the "little Keitel" or the "other Keitel".

COL. AMEN: Prior to your going to this conference, did Canaris make any other comment on these orders?

LAHOUSEN: Even at the time when these orders were issued, Canaris expressed strong opposition to them in our circles—when I say our circles, I mean mainly the divisional chiefs—and had a protest made through the Ausland Division, that is, through Bürckner. I no longer remember whether it was made in writing or whether Bürckner made it orally to Keitel directly; I think it

was done in both ways. Bürckner should be well informed about this.

COL. AMEN: When you say "protested through Bürckner," what do you mean?

LAHOUSEN: When I say Bürckner, I mean his division, or a group, or perhaps even a representative in his office, where questions of international law were dealt with by Count Moltke who, incidentally, also among the circle...

COL. AMEN: Will you repeat that?

LAHOUSEN: This protest or this counter-argument on the question of the treatment of Russian prisoners of war was forwarded by Canaris through the Ausland Division, that is, through Bürckner. The Ausland Division included a section which dealt with questions of international law, and the competent authority in that section was Count Moltke who was a member of Oster's inner circle, and who was executed after the 20th of July.

THE PRESIDENT: Would that be a convenient time to break off?

COL. AMEN: Yes, Sir.

THE PRESIDENT: Until 2 o'clock.

[A recess was taken until 1400 hours.]

Afternoon Session

THE PRESIDENT: Yes, Colonel Amen.

[Witness Lahousen resumed the stand]

COL. AMEN: Prior to the luncheon recess you were testifying about a conference in 1941 with Reinecke and others. Prior to that conference did Canaris tell you what kind of appeal to make to those present at the meeting?

LAHOUSEN: Before the discussion Canaris said, as I have already pointed out, that I should use factual arguments in order to have this order withdrawn or at least to weaken its effects, but that otherwise I should not take it into my head to use arguments of a humanitarian nature lest I make a fool of myself.

COL. AMEN: And now will you explain to the Tribunal, to the best of your recollection, exactly what happened and what was said in the course of that conference?

LAHOUSEN: The discussion was opened by General Reinecke, and he explained these orders in the manner in which I described them before the recess. He said that these measures were necessary and that it was essential that this idea should also be made clear to the Wehrmacht, and particularly to the officers' corps, since they apparently were still entertaining ideas which belonged to the Ice Age and not to the present age of National Socialism.

COL. AMEN: What views did you present at this conference?

LAHOUSEN: According to instructions I held the view of the Amt Ausland Abwehr—that is of Canaris—and in the main I pointed out, first of all, the most unfavorable effect of such measures on the troops, namely on the front troops, that they would never understand such orders, particularly not the simple soldier. Besides, we had reports that the executions were sometimes carried out before their eyes.

Secondly, I brought forward the objections of my office in regard to activities of the office itself, the unfavorable effect of these measures on the enemy, that is, the virtual hindering of Russians, who were surrendering to the last man without resistance, from deserting; and furthermore, the great difficulties which beset the Abwehr Division in acquiring agents, that is, people who, for various reasons, had voluntarily declared themselves ready to help the Germans.

COL. AMEN: In order that this may be clear on the record, because I think there was quite a bit of confusion in the translation, I want to point out one or two of those arguments again. What did

you say at this conference about the effect of the execution of these orders on Russian soldiers?

LAHOUSEN: I pointed out, first of all, that through these orders some elements among the Russian soldiers who were inclined to surrender were prevented from doing so. Secondly, that people who for any reason would have offered their services to the Abwehr would also be hindered by these measures. And that, *in summa,* an effect opposite to that which they had desired would result and the resistance of the Red Army soldiers would be increased to the utmost.

COL. AMEN: And in order that we may be perfectly clear, what did you say about the effect of the execution of these orders on the German troops?

LAHOUSEN: I said, that from several reports we had from the front, the effect on the morale and on the discipline of the troops was devastating.

COL. AMEN: Was there any discussion about international law at this conference?

LAHOUSEN: No. In this connection there was no discussion of international law. The manner of selection of the prisoners of war was particularly stressed. It was completely arbitrary apart from the general order in itself.

COL. AMEN: We will get to that in a moment. Were your views accepted at this conference?

LAHOUSEN: My views which were the views of the Amt Abwehr, which I was representing, were opposed in the sharpest possible manner by Müller, who with the usual cliches rejected the arguments that I had produced, and who made the sole concession that the executions, out of consideration for the feelings of the troops, should not take place before them but at a place some distance apart. He also made a few concessions in the question of the selection, which was completely arbitrary, and was just left to the Kommando leaders or to the prejudice of the Kommando leaders.

COL. AMEN: And subsequent to this conference did you learn whether an order was issued with respect to having these killings take place outside the sight of the German troops?

LAHOUSEN: Except for Müller's promise, which I have just mentioned, I heard no more about it at the time. I found a confirmation of the results of this conference and the promises then made to me in an order which was submitted to me only now.

COL. AMEN: Was there a conversation at this conference about the manner in which these orders for the killings were being executed?

LAHOUSEN: Yes. In the course of discussions the entire problem was under discussion including the manner in which these orders were carried out—according to my recollection—by the Einsatzkommandos of the SD. These SD squads were in charge both of singling out of persons in camps and in assembly centers for prisoners of war, and of carrying out the executions.

Reinecke also discussed measures regarding the treatment of Russian prisoners of war in the camps. Reinecke emphatically accepted the arguments put forth, not by me but by Müller, and voiced his conviction in very decisive and excessively sharp manner.

COL. AMEN: Now, will you explain to the Tribunal from what you learned at this conference the exact manner in which the sorting of these prisoners was made and in what way it was determined which of the prisoners should be killed?

LAHOUSEN: The prisoners were sorted out by Kommandos of the SD and according to peculiar and utterly arbitrary ways of procedure. Some of the leaders of these Einsatzkommandos were guided by racial considerations; particularly, of course, if someone were a Jew or of Jewish type or could otherwise be classified as racially inferior, he was picked for execution. Other leaders of the Einsatzkommando selected people according to their intelligence. Some had views all of their own and usually most peculiar, so that I felt compelled to ask Müller, "Tell me, according to what principles does this selection take place? Do you determine it by the height of a person or the size of his shoes?"

Müller was very emphatic in rejecting these and any other objections, and Reinecke adopted rigidly the same point of view as Müller, instead of accepting my opinions, that is, those of the Amt Ausland Abwehr, which were offered him as a "golden bridge" for his acceptance. That was essentially the contents of the discussion in which I participated.

COL. AMEN: And had you received knowledge about the manner in which these orders were executed through official reports which you received?

LAHOUSEN: We were currently informed of all happenings by our officials at the front or in the camps. Officers of the Abwehr Division III were active in these camps, and in this way, that is, through the normal service channels, we were informed by reports and oral presentation of all these measures and of their effects.

COL. AMEN: Was the information which you received secret and confidential information not open to others?

LAHOUSEN: The information was confidential in accordance with the manner in which our offices were run. *De facto,* however, the happenings in the camps and the occurrences taking place at the selections were known to large groups of the Wehrmacht.

COL. AMEN: Now, at this conference did you learn anything from Reinecke with respect to the treatment of Russian prisoners in prison camps?

LAHOUSEN: In this discussion the treatment of Russian prisoners in the camps was discussed by Reinecke, and Reinecke was of the opinion that in the camps their treatment must not be the same as the treatment of other allied prisoners of war, but that here, too, appropriate and discriminating measures must be applied. The camp guards, at all events, had to be furnished with whips, and at the slightest sign of an attempted escape or other undesirable act, the guards should have the right to resort to arms.

COL. AMEN: Besides the whips, what other equipment were the Stalag guards given?

LAHOUSEN: Those are details which I do not remember for the moment. I can only say what was mentioned in this discussion.

COL. AMEN: What, if anything, did Reinecke say about the whips?

LAHOUSEN: Reinecke said that the guards, that is, the guard details, should make use of their whips or sticks or whatever instruments they had.

COL. AMEN: Now, through official channels did you learn of an order for the branding of Russian prisoners of war?

THE PRESIDENT: Colonel Amen, I think you should refer to them as "Soviet", not "Russian" prisoners.

COL. AMEN: Yes, Your Honor.

[Continuing the interrogation.] Did you learn of such an order?

LAHOUSEN: I have heard about it in one of the discussions at which most of the previously mentioned divisional chiefs were usually present. At least a majority of them must have been present.

COL. AMEN: Do you know whether any protests were made with respect to that order?

LAHOUSEN: When the intention of branding these Soviet prisoners was made known, a very sharp protest was voiced at once by Canaris through the Amt Ausland, that is, by Bürckner himself.

COL. AMEN: What, if anything, did Canaris tell you with regard to this order?

LAHOUSEN: Canaris told us that the question had already been expounded in a medical opinion by some physicians; and that there were actually people to lend themselves to treating such a mad subject in a written medical opinion. That was the main topic of this discussion.

COL. Amen: What information, if any, did you receive through official channels regarding plans to bring Soviet prisoners back to German territory?

LAHOUSEN: In the same context and in the same circle—I must always repeat it—that is, in discussions between Canaris and the chiefs of his divisions I learned that the General Staff had prepared to bring Soviet prisoners into Germany, but that their transportation was suddenly abandoned. I remember that this was by direct order of Hitler—which resulted in the conditions developing in camps in the theater of operations where prisoners were crowded together, could not be fed, and could not be adequately clothed or housed, so that epidemics and cannibalism resulted in these camps.

COL. AMEN: I am not sure but what we missed some of your previous answer. Will you start again to tell us about the change which was made in these orders?

LAHOUSEN: Will you please repeat the question?

COL. AMEN: You referred to a change in the plans to take the Soviet prisoners back to German territory. Is that correct?

LAHOUSEN: Yes, they were not brought back into Germany.

COL. AMEN: And what was the result of this action, namely of their not being brought back at the direct order of Hitler?

LAHOUSEN: The result was as described just now.

COL. AMEN: But I want you to repeat it because we lost some of the answer in the interpreting process. Please just repeat it again.

LAHOUSEN: The enormous crowds of prisoners of war remained in the theater of operation, without proper care—care in the sense of prisoner of war conventions—with regard to housing, food, medical care; and many of them died on the bare floor. Epidemics broke out, and cannibalism—human beings driven by hunger devouring one another—manifested itself.

COL. AMEN: Were you personally at the front to observe these conditions?

LAHOUSEN: I made several trips with Canaris and I saw some of these things which I have just described, with my own eyes.

At the time I made notes of my impressions which were found amongst my papers.

COL. AMEN: Did you also obtain information as to these matters through official channels of the Abwehr?

LAHOUSEN: Yes, I received this information through the office subordinate to me and through the Amt Ausland.

COL. AMEN: From your official information, to what extent was the Wehrmacht involved in the mistreatment of these prisoners?

LAHOUSEN: According to my information, the Wehrmacht was involved in all matters which referred to prisoners of war, except the executions, which were the concern of the Kommandos of the SD and the Reichssicherheitshauptamt.

COL. AMEN: But is it not a fact that the prisoner-of-war camps were entirely under the jurisdiction of the Wehrmacht?

LAHOUSEN: Yes, prisoners of war were under the jurisdiction of the Supreme Command of the Wehrmacht.

COL. AMEN: But before they were placed in these camps, the Special Purpose Kommandos of the SS were responsible primarily for the executions and the selection of the people to be executed, is that correct?

LAHOUSEN: Yes.

COL. AMEN: Did you receive through official channels information regarding the existence of an order for the killing of British Commandos?

LAHOUSEN: Yes.

COL. AMEN: What action, if any, did Canaris or yourself take with respect to this order?

LAHOUSEN: The order, and as far as I remember, even the mere intention that such an order was to be issued, were discussed in our circle, that is between Canaris and his section chiefs. We all, of course, unanimously agreed on its rejection. The reasons, apart from the aspects of international law, were that the Amt Ausland had under its command a formation, which was attached to our section named "Regiment Brandenburg" which had a task similar to the Commandos. As the head of the section to which this regiment was attached and for which I considered myself responsible, I immediately and most emphatically protested against it in view of the retaliation measures which were to be expected as a result of this order.

COL. AMEN: Did you personally assist in the drafting of these protests?

LAHOUSEN: I know that twice a protest was lodged against this order by Canaris, and by Amt Ausland, through Bürckner. The

first time orally, or in writing as soon as the order was issued, and the second time after the first executions had been carried out in pursuance of this order. I myself helped to draft one of these written protests—I do not know whether the first or the second—making a contribution in the interest of my section, and the Regiment Brandenburg, whose functions were similar, very similar, to those of the Commandos.

COL. AMEN: To whom in the ordinary course did these protests go?

LAHOUSEN: The protests were addressed to Canaris' superior officer, that is to say, to the Chief of the OKW.

COL. AMEN: Who was that?

LAHOUSEN: It was Keitel, at that time.

COL. AMEN: Did these protests in the ordinary course go also to Jodl?

LAHOUSEN: That I cannot say, but it is possible.

COL. AMEN: Now, will you tell the Tribunal what were the grounds of the protests which you made?

LAHOUSEN: The grounds were above all, that it was contrary to the interpretation of international law that soldiers, that is to say, not agents or spies, but soldiers clearly recognizable as such, should be killed after they had been taken prisoner. That was the main point which was also of concern to my section since it also comprised soldiers who had to carry out such or similar tasks in their capacity as soldiers.

COL. AMEN: Were there any other grounds urged in protest against these orders?

LAHOUSEN: Certainly. Other reasons were also mentioned in accordance with the interests of the different sections affected by these orders. For the Amt Ausland, it was the point of view of international law. The Abwehr Division III was particularly interested in the interrogation of soldiers captured in commando raids, but never in seeing them killed.

COL. AMEN: Were there any other chiefs of the Abwehr Department who assisted in the preparation of these protests?

LAHOUSEN: As far as I remember today, no.

COL. AMEN: You mentioned Admiral Bürckner, did you not?

LAHOUSEN: Yes, Bürckner was not the chief of the Amt Ausland Abwehr, but only of the Amt Ausland.

COL. AMEN: Now, have you ever heard of an operation known as "Gustav"?

LAHOUSEN: The name "Gustav" was applied not to an operation but to an undertaking similar to the one which was demanded for the elimination of Marshal Weygand.

COL. AMEN: Will you tell the Tribunal what was the meaning of "Gustav"?

LAHOUSEN: "Gustav" was the expression used by the Chief of the OKW as a cover name to be used in conversations on the question of General Giraud.

COL. AMEN: When you say the Chief of the OKW, are you referring to Keitel?

LAHOUSEN: Yes.

COL. AMEN: And are you referring to General Giraud of the French Army?

LAHOUSEN: Yes, General Giraud of the French Army who, according to my recollection, fled from Königstein in 1942.

COL. AMEN: Do you know of any order issued with respect to General Giraud?

LAHOUSEN: Yes.

COL. AMEN: Who issued such an order?

LAHOUSEN: The Chief of the OKW, Keitel, gave an order of this kind to Canaris, not in writing but an oral order.

COL. AMEN: How did you come to know about this order?

LAHOUSEN: I knew of this order in the same way as certain other chiefs of the sections, that is Bentivegni, Chief of Abwehr Section I, Pieckenbrock and a few other officers. We all heard it at a discussion with Canaris.

COL. AMEN: What was the substance of the order?

LAHOUSEN: The essential part of this order was to eliminate Giraud, in a fashion similar to Weygand.

COL. AMEN: When you say "eliminate" what do you mean?

LAHOUSEN: I mean the same as in the case of Marshal Weygand, that is, it was intended and ordered that he was to be killed.

COL. AMEN: Do you recall the approximate date when this order was given by Keitel to Canaris?

LAHOUSEN: This order was given to Canaris several times. I cannot say for certain when it was given for the first time as I was not present in person. It was probably after the flight of Giraud from Königstein and prior to the attempt on the life of Heydrich, in Prague. According to my notes, this subject was discussed with me by Keitel in July of the same year, in the presence of Canaris.

COL. AMEN: Well now, what did Keitel first say to you personally about this affair?

LAHOUSEN: I cannot repeat his exact words, but the meaning was that he proclaimed the intention of having Giraud killed, and asked me, as in the case of Weygand, how the matter was progressing or had progressed so far.

COL. AMEN: And what did you say to him on that occasion?

LAHOUSEN: I cannot remember the exact words. I probably gave some evasive answer, or one that would permit gaining time.

COL. AMEN: Now, was this question later discussed by you at any time?

LAHOUSEN: According to my recollection, this question was once more discussed in August. The exact date can be found in my notes. Canaris telephoned me in my private apartment one evening and said impatiently that Keitel was urging him again about Giraud, and the section chiefs were to meet the next day on this question.

The next day the conference was held and Canaris repeated in this larger circle what he had said to me over the phone the night before. That is, he was being continually pressed by Keitel that something must at last be done in this matter. Our attitude was the same as in the matter of Weygand. All those present rejected flatly this new demand to initiate and to carry out a murder. We mentioned our decision to Canaris, who also was of the same opinion and Canaris thereupon went down to Keitel in order to induce him to leave the Military Abwehr out of all such matters and requested that, as agreed prior to this, such matters should be left entirely to the SD.

In the meantime, while we were all there, I remember Pieckenbrock spoke, and I remember every word he said. He said it was about time that Keitel was told clearly that he should tell his Herr Hitler that we, the Military Abwehr, were no murder organization like the SD or the SS. After a short time, Canaris came back and said it was now quite clear that he had convinced Keitel that we, the Military Abwehr, were to be left out of such matters and further measures were to be left to the SD.

I must observe here and recall that Canaris had said to me, once this order had been given, that the execution must be prevented at any cost. He would take care of that and I was to support him.

COL. AMEN: I don't think you have yet told us just who was present at this conference.

LAHOUSEN: The three Abwehr chiefs were present, Colonel Pieckenbrock, whom I have already mentioned, Colonel General Bentivegni, and I. Probably, also General Oster, and possibly Bürckner, but I cannot remember clearly. In my notes only those three chiefs are mentioned who all strictly rejected the proposal.

COL. AMEN: What was the next occasion when this matter was again brought to your attention?

LAHOUSEN: A little later, it must have been September, the exact date has been recorded, Keitel, then chief of the OKW, rang me up in my private apartment. He asked me, "What about 'Gustav'? You know what I mean by 'Gustav'?" I said, "Yes, I know." "How is the matter progressing? I must know, it is very urgent." I answered, "I have no information on the subject. Canaris has reserved this matter for himself, and Canaris is not here, he is in Paris." Then came the order from Keitel, or rather, before he gave the order, he put one more question: "You know that the others are to carry out the order?" By "the others," he meant the SS and SD. I answered, "Yes, I know." Then came an order from Keitel to immediately inquire of Müller how the whole matter was progressing. "I must know it immediately," he said. I said, "Yes," but went at once to the office of the Ausland Abwehr, General Oster, and informed him what had happened, and asked for his advice as to what was to be done in this matter which was so extremely critical and difficult for Canaris and me. I told him—Oster already knew as it was—that Canaris so far had not breathed a word to the SD concerning what it was to do, that is, murder Giraud. General Oster advised me to fly to Paris immediately and to inform Canaris and to warn him. I flew the next day to Paris and met Canaris at a hotel at dinner in a small circle, which included Admiral Bürckner, and I told Canaris what had happened. Canaris was horrified and amazed, and for a moment he saw no way out.

During the dinner Canaris asked me in the presence of Bürckner and two other officers, that is, Colonel Rudolph, and another officer whose name I have forgotten, as to the date when Giraud had fled from Königstein and when the Abwehr III conference had been held in Prague and at what time the assassination of Heydrich had taken place. I gave these dates, which I did not know by memory, to Canaris. When he had the three dates, he was visibly relieved, and his saddened countenance took on new life. He was certainly relieved in every way. I must add that—at this important conference of the Abwehr III Heydrich was present. It was a meeting between Abwehr III and SD officials who were

collaborating with it—officials who were also in the counter-intelligence.

Canaris then based his whole plan on these three dates. His plan was to attempt to show that at this conference he had passed on the order to Heydrich, to carry out the action. That is to say, his plan was to exploit Heydrich's death to wreck the whole affair. The next day we flew to Berlin, and Canaris reported to Keitel that the matter was taking its course, and that Canaris had given Heydrich the necessary instructions at the Abwehr III conference in Prague, and that Heydrich had prepared everything, that is, a special purpose action had been started in order to have Giraud murdered, and with that the matter was settled and brought to ruin.

COL. AMEN: There was a mistake I think in the translation back a little way. So if you don't mind, will you please go back to where you first referred to Heydrich in the conversation with Canaris, and repeat the story, because I think that the translation was incorrect. In other words, go back to the point where Canaris suddenly seemed relieved, and started to tell you what the apparent solution might be.

LAHOUSEN: All those present saw that Canaris was much relieved, as he heard the three dates from me. His whole plan or his maneuvering—and that was typical of his personality—was a purely intellectual or spiritual combination, built up on these three dates, essential being the date of the escape of Giraud, and the Abwehr III conference, for if the Abwehr III conference had taken place prior to Giraud's escape, then this combination would probably not have stood the test.

THE PRESIDENT: Colonel Amen, what is the reason for the repetition?

COL. AMEN: There was a mistake in the record. If it is the wish of the Tribunal, I shall not have him repeat it any further.

THE PRESIDENT: It seems clear to the Tribunal what was said.

COL. AMEN: Very well.

COL. AMEN: What, if anything, happened next insofar as the affair Giraud was concerned?

LAHOUSEN: Nothing more happened. Giraud fled to North Africa, and much later only I heard that Hitler was very indignant about this escape, and said that the SD had failed miserably—so it is said to be written in shorthand notes in the records of the Hauptquartier of the Führer. The man who told me this is in the American zone.

COL. AMEN: Were you acquainted with Colonel Rowehl?

LAHOUSEN: Yes.

COL. AMEN: Who was"he?

LAHOUSEN: He was an officer. He was a colonel of the Luftwaffe.

COL. AMEN: What was the work of the special squadron to which he was attached?

LAHOUSEN: Rowehl had a special squadron for altitude flying which operated together with the Ausland Abwehr for the reconnaissance of certain territories or states.

COL. AMEN: Were you ever present when he reported to Canaris?

LAHOUSEN: I was present occasionally.

COL. AMEN: Do you recall what Rowehl told Canaris on those occasions?

LAHOUSEN: He reported on the results of the reconnaissance flights and submitted his photographs, I believe, to Abwehr I, Section Luft which, competent for this work, made some evaluation of them.

COL. AMEN: Did you know over what territories these reconnaissance flights had been made?

LAHOUSEN: They were taken over Poland, England and in southeastern Europe; I cannot be more explicit as I do not know the specific territories or countries of southeastern Europe. All I know is that this squadron was stationed in Budapest for the purpose of making such reconnoitering flights.

COL. AMEN: Did you personally see some of these photographs?

LAHOUSEN: Yes.

COL. AMEN: Now will you tell the Tribunal the dates when you know that these reconnaissance flights over London and Leningrad were being made?

LAHOUSEN: I cannot give the exact dates. I only remember, being present at discussions between Rowehl and Canaris—sometimes Pieckenbrock was there too—that these reconnaissance flights did take place in the aforementioned areas, that photographic material was furnished and that the squadron operated from Hungarian air fields in the vicinity of Budapest. I know this because once I myself flew back from Budapest to Berlin in such a plane, and also from knowing some of the pilots and their activities.

COL. AMEN: What I am going to ask you about now is the year, or years we will say, when these reconnaissance flights were being made.

LAHOUSEN: They were undertaken in 1939 before the beginning of the Polish campaign.

COL. AMEN: Were these flights kept secret?

LAHOUSEN: Yes, of course they were secret.

COL. AMEN: And why were these flights being made from Hungary, if you know?

LAHOUSEN: A Luftwaffe expert would have to give this information.

COL. AMEN: Do you have in your possession a report of the treatment of the Jews in certain territories?

LAHOUSEN: Yes, I have a report which probably came to us through Abwehr Department III, and I made several copies for Canaris and one for myself. This report deals with the shooting of Jews in Borrisov.

COL. AMEN: Is that an official report?

LAHOUSEN: Yes, it is. The report came by way of the Abwehr. The files would show from what office it came to us. In connection with these shootings of Jews in Borrisov the name of a counter-intelligence officer, whom I knew quite well and who was an Austrian like me, was mentioned.

COL. AMEN: Now, may it please the Tribunal, I should like to offer in evidence a photostatic copy, or copies, of the entries made by the witness in every detail, together with a photostatic copy of the report. The originals are here in court, but cannot be lifted out of the box in which they are contained. They are so much damaged by a bomb explosion that if they were to be lifted out of the box, they would be destroyed beyond use, but we have had them photostated, and the photostatic copies are now available. That letter would be Exhibit USA-80, 3047-PS.

THE PRESIDENT: Do I understand, Colonel Amen, that only such portions of these documents as are read in Court will be in evidence?

COL. AMEN: Well, these have been used by the witness to refresh his recollection.

THE PRESIDENT: Yes, I know they have.

COL. AMEN: And none of them have been read in full in court, but they may be so read at any time, Sir.

THE PRESIDENT: If you want them to go into evidence as documents, you must read them, of course. Colonel Amen, do you want to use the documents any more than you already used them for the purpose of refreshing the witness' memory?

COL. AMEN: I do not, Sir, except having used them in this fashion, I now think it is only fair to offer them in evidence for

the information and scrutiny of the Tribunal; as far as I'm concerned they have served their purpose.

THE PRESIDENT: If the Defense wants to see them for the purpose of cross-examination, of course, they may do so.

COL. AMEN: Oh, yes, Sir. I have offered them already Sir, to be Exhibit USA-80, 3047-PS.

THE PRESIDENT: But otherwise they may not be put in evidence.

COL. AMEN: Correct.

THE PRESIDENT: From this damaged paper, it seems to contain a report on the execution of Jews in Borrisov.

COL. AMEN: Yes.

THE PRESIDENT: That again will not be in evidence unless you read it.

COL. AMEN: Correct, Sir. We will include that in the offer which I just made to you, that unless what we are offering is desired by the Court I will not offer it in evidence or read it.

THE PRESIDENT: Very well, the Court does not desire it.

COL. AMEN: Very well. *[Turning to witness.]* As a member of the Abwehr, were you generally well informed on the plans of the German Reich for the waging of war?

LAHOUSEN: Insofar as the effects of the plans concerned the preparatory activities or co-operation of the Amt Ausland Abwehr.

COL. AMEN: Did any intelligence information ever come to your attention which was not available to an ordinary person, or to an ordinary officer in the Army?

LAHOUSEN: Yes, certainly. That was in the nature of my office.

COL. AMEN: And, on the basis of the knowledge which you so obtained, did you in your group come to any decisions as to whether or not the attack on Poland, for example, was an unprovoked act of aggression?

THE PRESIDENT: Well...

LAHOUSEN: Would you be kind enough to repeat the question?

THE PRESIDENT: That is one principal question which this Court has to decide. You cannot produce evidence upon a question which is within the province of the Court to decide.

COL. AMEN: Very well, Sir. The witness is now available for cross-examination.

THE PRESIDENT: Is it the Soviet Prosecutor's wish to ask any questions of this witness? General Rudenko?

GENERAL R. A. RUDENKO (Chief Prosecutor for the U.S.S.R.): Witness Lahousen, you have made definite replies to questions by Colonel Amen and I should like to have certain details. Am I to understand you rightly that the insurgent units of the Ukrainian nationalists were organized under the direction of the German High Command?

LAHOUSEN: They were Ukrainian immigrants from Galicia.

GEN. RUDENKO: And from these immigrants were formed Commandos?

LAHOUSEN: Yes. "Commando" perhaps is not quite the right expression. They were people who were brought together in camps and were given a military or a semi-military training.

GEN. RUDENKO: What was the function of these Commandos?

LAHOUSEN: They were organizations of immigrants from the Galicia Ukraine, as I already previously stated, who worked together with the Amt Ausland Abwehr.

GEN. RUDENKO: What were these troops supposed actually to accomplish?

LAHOUSEN: Tasks were assigned to them before each combat by the office in charge of the command, that is, in the case of orders originating from the office to which I belonged, they were determined by the OKW.

GEN. RUDENKO: What functions did these groups have?

LAHOUSEN: These Commandos were to carry out sabotage of all kinds behind the enemy's front line.

GEN. RUDENKO: That is to say in what territory?

LAHOUSEN: In those territories with which Germany had entered into war, or speaking of the concrete case here in question, with Poland, or to be more correct in Poland.

GEN. RUDENKO: Of course in Poland. Well, sabotage and what else?

LAHOUSEN: Sabotage, such as wrecking of bridges and other objectives of military importance. The Wehrmacht operational staff determined what was of military importance; details of that activity I have just described, namely, destruction of militarily important objectives or objectives important for a particular operation.

GEN. RUDENKO: But what about terroristic activities? I am asking you about the terroristic activities of these units.

LAHOUSEN: Political tasks were not assigned to them by us, that is, by the Amt Ausland Abwehr. Political assignments were made by the respective Reich offices responsible, where it should be said, often as a result of erroneous...

GEN. RUDENKO: You have misunderstood me. You are speaking about sabotage and I was asking you concerning terroristic acts of these organizations. Do you understand me? Was terror one of their tasks? Let me repeat again, as well as the sabotage acts, were there any terror acts assigned to them?

LAHOUSEN: On our part never.

GEN. RUDENKO: You have told me that from your side there was no question of terrorism; from whose side was the question put, who worked on this aspect?

LAHOUSEN: Well, that was the whole point all the time. Each one of these military Abwehr units was asked again and again to combine our purely military tasks which were determined by the needs of the Wehrmacht leadership with political or terroristic measures, as is clearly shown by the memorandum on our files concerning preparation of the campaign against Poland.

GEN. RUDENKO: Answering the question of Colonel Amen as to whether the Red Army man was looked upon as an ideological enemy and was subjected to corresponding measures, what do you mean by corresponding measures? I repeat the question. You have said that the Red Army man was looked upon by you, I mean by the German High Command as an ideological enemy and was to be subjected to corresponding measures. What does it mean? What do you mean by saying corresponding measures?

LAHOUSEN: By special measures I mean quite clearly all those brutal methods which were actually used and which I have already mentioned and of which I am convinced there were many more, more than I could possibly have seen in my restricted field and more than was known to me.

GEN. RUDENKO: You already told the Tribunal that there were special Commandos for the screening of prisoners of war. I understand that they were screened in the following way: Into those who were to be killed and the others who were to be interned in camps, is that right?

LAHOUSEN: Yes, these special Commandos of the SD were concerned, however, solely with the execution of those selected amongst the prisoners of war.

GEN. RUDENKO: That of course makes the chief of the Commandos responsible and decisive for the question as to who was to die and who was not to die.

LAHOUSEN: Yes, in the course of a discussion with Reinecke, the question was raised whether to give to the head of one such Commando unit the right to decide who, in view of the order, was to be looked upon as Bolshevistically tainted or not.

GEN. RUDENKO: And the chief of the Commando unit decided upon his own authority, what to do with them.

LAHOUSEN: Yes, at least up to the date of the discussion in which I participated, upon an order from Canaris. This point was one of the most important ones of this discussion.

GEN. RUDENKO: You have told us about your protest and the protest of Canaris against these atrocities, killings, and so forth. What were the results of these protests?

LAHOUSEN: As I have already stated, there were some very modest results, so modest that you can hardly call them results at all. For the fact that executions were not to take place in sight of the troops but only at a distance of 500 meters can in no way be called a good result.

GEN. RUDENKO: What conversation did you have with Müller on this subject, concerning concessions he had made? You told us when you were asked by General Alexandrov....

LAHOUSEN: Who was Alexandrov?

GEN. RUDENKO: You were questioned by Colonel Rosenblith, a representative of the Soviet Delegation. I am sorry I made a mistake. Perhaps you will remember your communication to Colonel Rosenblith regarding the conversation and the concessions that Müller made. I shall ask you to tell us that part again.

LAHOUSEN: The name of Alexandrov does not mean anything to me. What has the name Alexandrov to do in this connection?

GEN. RUDENKO: Alexandrov was a mistake on my part. Forget it. I am interested in the question of Müller, concerning the shootings, torturings, and so forth.

LAHOUSEN: I had a long conversation with Müller, especially with regard to making the selections. I cited, to be concrete, as an example of the methods used, the case of the Crimean Tartars, Soviet Russian soldiers who, according to their nationality, originated from the Crimea; and cases where, for certain reasons, Mohammedan people were declared Jews, and were then executed. Thus, aside from the brutality of these and all other similar measures, this proved the entirely irrational point of view, incomprehensible to any normal person, which characterized the handling of the entire matter. To that, among other things, I made reference.

GEN. RUDENKO: You told us how these measures were carried out.

THE PRESIDENT: He doesn't hear you, carry on but go a little bit more slowly.

GEN. RUDENKO: Have you finished your report concerning the conversation with Müller?

LAHOUSEN: No, I didn't quite finish, I had many discussions with Müller on the subject—it was the central point of all these conversations. All the subjects about which I have given evidence were discussed first with Müller, who was the competent man, at least in his sector. As for Reinecke, he then merely decided according to his ideas, which were contrary to those held by me and my office. I would be grateful if you would tell me what particular points you would like to have me explain and I would gladly repeat anything.

GEN. RUDENKO: Your usual topic of discussion was murders, shootings, and so forth, especially shootings. I am interested in all that. What did Müller say about it? How were shootings to take place, especially in relation to your protests?

LAHOUSEN: He told me in a rather cynical way, that if the troops were so terribly disturbed by these shootings, as you claim, and their morale is suffering therefrom the shootings would simply take place at some distance, *et cetera.* That was the main meaning of what he said.

GEN. RUDENKO: That was the result of your protests?

LAHOUSEN: Yes, that was the very poor result of the protest, and then still a certain concession . . .

GEN. RUDENKO: And one last question. The conditions of the concentration camps where Soviet prisoners were taken and where mass destruction of prisoners was committed was all this dependent on directives of the German High Command?

LAHOUSEN: In some sort of cooperation with the competent authorities, the Reich Main Security Office. In addition to all I have stated, I must point out that at the time, I myself did not read the orders and that I learned of the collaboration, or the coordination in this question mainly from the conversation with Reinecke, who came to me as a representative of the OKW and with the aforementioned Müller.

GEN. RUDENKO: Excuse me, did you get that information in private or official sessions or conversations?

LAHOUSEN: It was a strictly official meeting called by General Reinecke as chairman. I was not there as "Lahousen," but as a representative of the Amt Ausland Abwehr.

GEN. RUDENKO: Did the orders which were passed on in these sessions come to you directly from the German High Command?

LAHOUSEN: They came from the German High Command and from one of the highest offices of the RSHA according to what Reinecke said. I have never seen or read them with my own eyes, therefore this is all I can state.

GEN. RUDENKO: But you have heard during these meetings where they were discussed and when they were discussed.

LAHOUSEN: Yes, during the discussion, the course of which I have already described, or at least its essential aspects, of course.

GEN. RUDENKO: And during these sessions which you mentioned were the questions raised about murders and burning of cities?

LAHOUSEN: There was no talk at these discussions about setting on fire, but mention was made of the orders which had been issued with respect to the prisoners.

GEN. RUDENKO: About the murders only.

LAHOUSEN: About the executions.

GEN. RUDENKO: That is all.

THE PRESIDENT: Does the French Prosecutor wish to ask any questions?

MR. DUBOST: One single question. Who gave the orders for the liquidation of the Commandos?

LAHOUSEN: What was it exactly that you meant? Presumably the killing of members of the Commando troops?

MR. DUBOST: Who gave the orders for the execution?

LAHOUSEN: I did not read the order myself, but according to what was said in our circles about this subject, the idea came from Hitler himself; but who was responsible for transforming this idea into an order, I do not know.

MR. DUBOST: The Defendants Keitel, Jodl—what orders did they handle; what orders did they give?

LAHOUSEN: I cannot say that because I do not know it.

MR. DUBOST: What were the reasons for these orders, as far as you know?

LAHOUSEN: Not merely was it my opinion, but it was common knowledge, that the reasons for these orders were to cause an intimidating effect and thus to prevent and paralyze the activity of the Commandos.

MR. DUBOST: Who gave the order to have General Giraud executed or murdered?

LAHOUSEN: I did not hear the first part of the question.

MR. DUBOST: Who gave the order to kill Weygand and Giraud?

LAHOUSEN: The order to liquidate, that is, to be explicit, to murder Weygand and Giraud, was given to me by Canaris, who received it from Keitel. This order and this intention regarding the matter Weygand, were furthermore transmitted to me through

direct speech with Keitel. Keitel asked me after Canaris had read to him a report in my presence, on December 23, 1940, according to my notes, about the progress in the case Weygand.

As regards the second case, that is the case Giraud, I had it from Canaris himself that the order was sent to him by Keitel—as did also the other chiefs who were present. I further heard of it a second time during a report from Canaris to Keitel, in my presence, in July 1942, when this order was communicated to me in a manner similar to that of the case Weygand, and, finally, I received it in a direct manner from Keitel through telephone conversation which I described here, and transmitted as urgent intelligence.

[The British Prosecutor indicated that he had no questions.]

THE PRESIDENT: Do you want to ask any questions, Dr. Nelte?

DR. NELTE: The witness, Lahousen, has given very important evidence, particularly charging in a grave manner the Defendant Keitel, represented by me.

THE PRESIDENT: Are you going to make a speech now?

DR. NELTE: My client, the Defendant Keitel, would like to put numerous questions to the witness after he has had a discussion with me. I therefore ask the Tribunal to allow either that there may be a considerable adjournment now or that at the next session these questions may be discussed in cross-examination.

THE PRESIDENT: Very well. You shall have an opportunity to cross-examine at 10 o'clock tomorrow. Does any member of the Tribunal wish to ask any questions of the witness now?

THE TRIBUNAL (Mr. Biddle): I should like to ask the witness whether the orders to kill the Russians and in connection therewith the treatment of the prisoners were in writing.

LAHOUSEN: As far as I know, yes, but I did not see or read these orders myself.

THE TRIBUNAL (Mr. Biddle): Were they official orders?

LAHOUSEN: Yes, they were official orders, of course, though the facts were brought out in a roundabout way. It was these orders which Reinecke and the others discussed and this is how I learned about the essential points of these orders. I did not read them myself at that time. But I knew that they were not oral agreements because they were commented upon; consequently I knew that something existed in writing. Only I could not and cannot say whether there were one or more orders, and who signed them. This I did not claim to know. I submitted my knowledge which is based solely on discussions and reports from which I quite clearly could deduct the existence of orders.

THE TRIBUNAL (Mr. Biddle): Do you know to whom or to what organizations such orders were usually addressed?

LAHOUSEN: Orders of this kind, involving the question of principle, went to the OKW, because things relating to prisoners of war were and had to be the concern of the OKW, and in particular of Reinecke, which also explains the discussions with Reinecke.

THE TRIBUNAL (Mr. Biddle): So usually the members or some of the members of the General Staff would have known of such orders, would they not?

LAHOUSEN: Certainly, many members of the Wehrmacht knew of the essential contents of this order, for the reaction of the Wehrmacht against this order was tremendous. Apart from official discussions which I have reported here, these orders were discussed a great deal in casino clubs and elsewhere, because all these matters became manifest in the most undesirable form and had a most undesirable effect on the troops. As a matter of fact, officers, and high-ranking officers at the front, either did not transmit these orders or sought to evade them in some way and this was discussed a great deal. I have named some of these officers; some are listed in the notes, diary, *et cetera.* It was not an everyday occurrence, and it was then the topic of the day.

THE TRIBUNAL (Mr. Biddle): And were the orders known to the leaders of the SA and SD?

LAHOUSEN: They must have been known to them, for the ordinary soldiers who watched all these proceedings knew and spoke about them. To a certain extent they were even known to the civilian populace; civilians learned far more details about these matters from wounded soldiers returning from the front than I could tell here.

THE PRESIDENT: General Nikitchenko wants to ask a question.

THE TRIBUNAL (Major General I. T. Nikitchenko): You have told us that you received instructions about the murder of prisoners of war and brutal treatment. You received these orders from Reinecke?

LAHOUSEN: Well, I must correct something that I said. It is not I and not the Amt Ausland Abwehr who got the order, because we had nothing to do with it, but I knew about it, as I was present at this conference as a representative of the Amt Ausland Abwehr. But we ourselves had nothing to do with the treatment of prisoners of war, and certainly not in this negative sense.

THE TRIBUNAL (Gen. Nikitchenko): Apart from these meetings, the meetings of the High Command, were such instructions

ever given? Were there any meetings of the High Command headquarters about killings and ill-treatment of prisoners of war?

LAHOUSEN: There certainly must have been a number of discussions on this subject, but I was present at only one of them, which I have already described, so I cannot say anything more about it.

THE TRIBUNAL (Gen. Nikitchenko): At headquarters?

LAHOUSEN: In the OKW—at headquarters.

THE TRIBUNAL (Gen. Nikitchenko): At the headquarters of the German Army?

LAHOUSEN: Certainly in the OKW where Amt Ausland Abwehr had sent a delegate in my person, if for no other reason than to enter protest. As a matter of fact our Amt had nothing to do with prisoners of war in this sense. But contrarywise we were, because of technical and easily understandable reasons, interested in proper treatment of the prisoners.

THE TRIBUNAL (Gen. Nikitchenko): The meetings were not about good treatment of prisoners, but rather about ill-treatment and killing them? Was Ribbentrop also present at these meetings?

LAHOUSEN: No! On no account. This discussion—I mean the one conference about which I have given testimony—took place after the accomplished fact. Everything had already happened; executions had taken place, and now effects began to make themselves felt. Protests of all kinds, from the front and from other places, such as, for example, our own office, Amt Ausland Abwehr, followed. This conference was intended to show the necessity for the orders which had already been given, and to justify measures already taken. These discussions took place after the beginning of the operations, after the orders which had been given had already been carried out, and all that I have touched upon or stated had already happened and produced its evil effects. The accomplished fact had been thoroughly discussed with the idea of making one more attempt, a last attempt on our part, to put to an end, and break off, the matter.

THE TRIBUNAL (Gen. Nikitchenko): Did all these conversations bring about results?

LAHOUSEN: That is what I talked about, and that was the subject of the discussions with Reinecke in which I took part. I did not take part in the other discussions and therefore can say nothing about them.

THE TRIBUNAL (Gen. Nikitchenko): At which other meetings had orders been given about killings of Ukrainians and burning of towns and villages in Galicia?

LAHOUSEN: I would like to achieve clarity relative to what the General has in mind. Am I being asked about the conference in the Führer's train in 1939 prior to the fall of Warsaw? According to the entries in Canaris' diary, it took place on 12 September 1939. This order or directive which Ribbentrop issued and which Keitel transmitted to Canaris, Ribbentrop also giving it to Canaris during a brief discussion, was in reference to the organizations of National Ukrainians with which Amt Abwehr cooperated along military lines, and which were to bring about an uprising in Poland, an uprising which aimed to exterminate the Poles and the Jews; that is to say, above all, such elements as were always being discussed in these conferences. When Poles are mentioned, the intelligentsia especially are meant, and all those persons who embodied the national will of resistance. This was the order given to Canaris in the connection I have already described and as it has already been noted in the memorandum. The idea was not to kill Ukrainians but, on the contrary, to carry out this task of a purely political and terroristic nature together with the Ukrainians. The cooperation between Amt Ausland Abwehr and these people who numbered only about 500 or 1000, and what actually occured can be clearly seen from the diary. This was simply a preparation for military sabotage.

THE TRIBUNAL (Gen. Nikitchenko): These instructions were received from Ribbentrop and Keitel?

LAHOUSEN: They came from Ribbentrop. Such orders which concerned political aims couldn't possibly come from Amt Ausland Abwehr because any...

THE TRIBUNAL (Gen. Nikitchenko): I am not asking you whether they could or could not. I am asking you where they came from.

LAHOUSEN: They came from Ribbentrop, as is seen from the memorandum. This is the memorandum that I made for Canaris.

DR. DIX: I have three short questions. May I put them?

THE PRESIDENT: It is now past 4, and we have to hear the requests of the Defendant Hess, and the Court has to be cleared for them. So I think you had better postpone them until tomorrow.

[A recess was taken and all defendants except Hess were removed from the courtroom.]

THE PRESIDENT: I call upon counsel for the Defendant Hess.

DR. GÜNTHER VON ROHRSCHEIDT (Counsel for Defendant Hess): May it please the Tribunal, I am speaking as counsel for the Defendant Rudolf Hess.

In the proceedings which have already been opened against Hess, the Court is to decide solely the question whether the defendant is fit or unfit to be heard, and further, whether he might even be considered entirely irresponsible.

The Court itself has posed this question affecting the proceedings against Hess by asking the experts to state their opinion, firstly, on whether the defendant is in a position to plead on the charge; secondly, on his state of mind, whether he is mentally sound or not.

With regard to question 1 (Is the defendant in a position to plead?) the Tribunal asked the experts specifically whether the defendant is sufficiently in possession of his mental faculties to understand the proceedings and to conduct his defense adequately —that is, to repudiate a witness to whom he has objections and to understand details of the evidence.

The experts to whom this task was entrusted have, in separate groups, examined Hess for a few days and have stated their expert opinion on these questions in writing. As the defendant's counsel I consider it my duty, after studying the reports of these experts, which unfortunately, I could not do as carefully as I desired since time was short, and in view of my knowledge of the defendant and my experience in almost daily contact with him, to state my opinion that the defendant Hess is not in a position to plead in the case against him.

I am therefore obliged to file the following applications on behalf of the Defendant Hess:

Firstly, I request a ruling to suspend the proceedings against Hess temporarily. Secondly, if his inability to plead is recognized by the Tribunal, I request that the proceedings against the defendant be not conducted in his absence. Thirdly, if the Tribunal rules that Hess is fit to plead, I request that in addition other competent psychiatrists be consulted for an authoritative opinion.

Before I come to the reasons for my applications, I should like to say, at the request of the defendant, that he himself considers he is fit to plead and would himself like to inform the Court to that effect.

May I now state the reasons for my application:

In regard to my first application: If the defendant is not fit to plead, I request that the proceedings against Hess be temporarily suspended.

In this connection may I refer to the opinions already submitted to the Tribunal.

After examining the questions placed before them by the Tribunal, the experts have come to the conclusion which is embodied in what I may call the main report signed by a mixed

delegation consisting as far as I could determine of English, Soviet, and American experts, and dated 14 November 1945.

This report states, I quote: "The ability of the Defendant Hess is impaired"—that is—"the ability to defend himself, to face a witness, and to understand details of the evidence." I have cited this part of the report because it is closest to the questions put to the experts by the Tribunal.

Another opinion says that "...even if Hess' amnesia does not prevent the defendant from understanding what happens around him and to follow the proceedings in Court..."

THE PRESIDENT *[Interposing]:* Would you speak a little more slowly? The interpreters are not able to interpret so fast.

Would you also refer us expressly to those parts of the medical reports to which you wish to draw our attention?

Do you understand what I said?

DR. VON ROHRSCHEIDT: Yes. I am sorry I cannot refer to the pages of the original or English text, as I only have the German translation; so I can only say that the first quotation...

THE PRESIDENT *[Interposing]:* You can read the words in German, and they will be translated into English.

Which report are you referring to?

DR. VON ROHRSCHEIDT: I was referring to the report of 14 November as far as I can see from my German translation. This report seems to have been drawn up by a delegation of English, Soviet, and American experts, and accompanied the report of 17 November 1945. What I quoted was the following—may I repeat:

> "The ability of the Defendant Hess to defend himself, to face a witness, and to understand details of the evidence is impaired."

I ask the Tribunal to tell me...

THE PRESIDENT: Can you say which of the doctors you are quoting?

DR. VON ROHRSCHEIDT: It is the report which, in my copy, is dated 14 November 1945, and, as I said, was presumably signed by Soviet, American, and English doctors.

Unfortunately, when returning the material yesterday evening after translation into German I could not get the original text, and my attempt to obtain it now failed through lack of time.

THE PRESIDENT: Have the English prosecutors got a copy, and can you tell us which it is?

SIR DAVID MAXWELL-FYFE: I'm sorry, My Lord, I think I am in the same difficulties as your Lordship. On the order that I have, I have copies of four medical reports. Your Lordship will see

at the end of the document headed "Order," it says, "Copies of four medical reports are attached."

The first one of these is signed by three English doctors on the 19th of November. The second is signed by three American doctors and a French doctor, dated the 20th of November 1945. And then there is a report signed by three Soviet doctors, dated the 17th of November. And one is signed by three Soviet doctors and the French doctor dated the 16th of November. These are the only ones which I have with the Court's order.

THE PRESIDENT: Yes.

I don't know what this report is that you are referring to.

SIR DAVID MAXWELL-FYFE: Dr. Von Rohrscheidt seems to have an unsigned report of the 14th.

THE PRESIDENT: Dr. Von Rohrscheidt, have you got the four reports which are really before us? I will read them out to you.

The first one I have got in my hand is the 19th of November 1945, by Lord Moran, Dr. Rees, and Dr. Riddoch. Have you got that? That is the English report.

DR. VON ROHRSCHEIDT: I only have this report in the German translation and not in the original.

THE PRESIDENT: But if you have got it in the German translation, that is quite good enough.

Then the next one is dated the 20th of November 1945, by Dr. Jean Delay, Dr. Nolan Lewis, Dr. Cameron, and Colonel Paul Schroeder. Have you got that?

DR. VON ROHRSCHEIDT: Yes, I have that.

THE PRESIDENT: That is two.

Then, the next one is dated the 16th of November, and is signed by three Soviet doctors and one French doctor, Dr. Jean Delay, dated the 16th of November. Have you got that?

DR. VON ROHRSCHEIDT: Yes.

THE PRESIDENT: Then there is another report of the 17th, signed by the three Soviet doctors alone, without the French doctor.

DR. VON ROHRSCHEIDT: Yes, I have that one.

THE PRESIDENT: Now, will you refer us to the passages in those reports upon which you rely?

There is another report by two English doctors which is practically the same. That is the one I have already referred to, that does not contain the name of Lord Moran on it, dated the 19th of November.

DR. VON ROHRSCHEIDT: Yes, I think I can shorten the proceedings by saying that in my opinion all the reports surely agree

—even if not in the same words—that the ability of the accused Hess to defend himself, to face a witness, and to understand details of the evidence is impaired. And under this assumption that all the medical opinions agree on this point I, as the defendant's counsel, must come to the conclusion that the defendant is unable to plead. The reduced capacity of the defendant to defend himself, which is caused by his mental defect, recognized by all experts as amnesia and described as a mental condition of a mixed character, but more than mere mental abnormality, must be accepted as meaning that he is unfit to plead.

I am of the opinion that the conclusion reached by the medical experts implies that, in the way the question was formulated, the Defendant Hess cannot adequately defend himself on account of this mental defect, namely, amnesia. The medical reports also state that the defendant is not insane. That is not the important point at the moment because in my view it can already be convincingly stated, on the basis of the reports as such that on account of his reduced mental ability the defendant is not in a condition to understand the entire proceedings.

I myself believe—and I think that my opinion on this agrees with the medical opinion—that the defendant is completely incapable of making himself understood in a manner expected from a mentally normal defendant.

In view of my own experience with him I consider that the defendant is incapable of grasping the charges which the Prosecution will bring against him to the extent required for his defense, since his memory is completely impaired. On account of his loss of memory he neither remembers events of the past nor the persons with whom he associated in the past. I am, therefore, of the opinion that defendant's own claim that he is fit to plead is irrelevant. And since, as the medical report says, his condition cannot be rectified within appreciable time, I think that the proceedings against him should be suspended.

Whether the narco-synthesis treatment suggested by the medical experts will bring about the desired effect is uncertain. It is also uncertain within what period of time this treatment would result in the complete recovery of the defendant's health. The medical reports accuse the defendant of deliberately refusing to undergo such medical treatment. The defendant himself, however, tells me that, on the contrary, he would readily undergo treatment but that he refuses the suggested cure because firstly, he believes that he is completely sound and fit to plead, that therefore this cure is unnecessary; secondly, because he disapproves on principle of such violent intervention, and finally because he thinks that such an

intervention at this time might render him unfit to plead and to take part in the proceedings—and that is the very thing he wishes to avoid.

If, however, the defendant is incapable of pleading, or of defending himself, as is stated in the medical report, and if this condition is likely to last for a long time, then in my opinion, a basis exists for the temporary suspension of the proceedings against him.

Coming now to my second application:

If the Tribunal accepts my arguments and declares the Defendant Hess unfit to plead, then, according to Article 12 of the Charter, it would be possible to proceed against the defendant *in absentia*. Article 12 provides that the Tribunal has the right to proceed against a defendant in his absence if he cannot be found, or if for other reasons the Tribunal deems it necessary in the interests of justice. The question then is whether it is in the interest of justice to proceed against the defendant *in absentia*. In my opinion it is incompatible with real justice to proceed against the defendant if he is prevented by his impaired condition—namely, amnesia which is recognized by all the medical experts—from personally safeguarding his rights by attending the proceedings.

In a trial in which charges being brought against the defendant are so grave that they might entail the death penalty, it seems to me incompatible with real justice that the defendant should on account of his impaired condition, be deprived of the rights granted him under Article 16 of the Charter. This Article of the Charter makes provisions for the defendant's own defense, for the opportunity of giving evidence personally, and for the possibility of cross-examining every witness called by the Prosecution. All this is of such great importance for the Defense, that exclusion from any of these rights would, in my opinion, constitute a grave injustice to the defendant. A trial *in absentia* could therefore not be regarded as a fair trial.

If as I have stated the defendant's capacity to defend himself is reduced for the reasons agreed on and to the extent established in the reports of the experts, then he is also not in a position to give his counsel the information necessary for a defense conducted in the defendant's absence.

Since the Charter has clearly laid down these rights of the defendant's, it seems unjust to me as defense counsel, that the defendant should be deprived of them because his illness prevents him from personally safeguarding them by attending the proceedings.

The provisions in Article 12 of the Charter for trying a defendant in his absence must surely be looked upon as applying in an exceptional case of a defendant who endeavors to evade the proceedings although able to plead. But the Defendant Hess has told me, and he will probably emphasize it to the Tribunal, that he wishes to attend the proceedings; that he will therefore consider it particularly unjust if the proceedings are conducted in his absence, despite his good will, despite the fact that he wishes to attend them.

I therefore request the Tribunal, if it declares the defendant unfit to plead, that it will not proceed against him in his absence.

And now my third application:

If the Tribunal considers the Defendant Hess fit to plead, thereby overruling my opinion and what I think is also the conclusion of the medical reports, I request that additional medical experts be consulted to re-examine this question since as far as I saw from the reports, each of the doctors examined and talked to the defendant for only a few hours on one day, one of them on two days. In a case of such outstanding importance as this one I think it would be necessary to place the defendant into a suitable hospital to obtain a reliable picture based on several weeks of examination and observation. The experts themselves are, obviously, not quite sure whether Defendant Hess beyond his inability to plead, is insane or at least not of sound mind. That is clear from the fact that all the medical statements end by emphasizing that if the Tribunal does not consider the defendant unfit to plead, he should again be subjected to a psychiatric examination.

I think therefore that this suggestion of the psychiatrists who have already examined him should be followed, and I request, that if the Tribunal considers the defendant fit to plead another exhaustive medical examination be authorized.

THE PRESIDENT: I want to ask you one question: Is it not consistent with all the medical opinions that the defendant is capable of understanding the course of the proceedings, and that the only defect from which he is suffering is forgetfulness about what happened before he flew to England?

DR. VON ROHRSCHEIDT: Mr. President, it is true that the experts consider the Defendant Hess capable of following the proceedings. But, on the other hand, in answer to the questions put to them, they emphasize that the defendant is not capable of defending himself. The Tribunal asked the experts to give their opinion on the question—may I read it again, under the second point: "Is the defendant sane or not?" The question was answered in the affirmative by all experts, but that does not exclude the fact that the defendant might, at this moment, be incapable of pleading.

The Tribunal's question was this: "... the Tribunal wishes to be advised whether the defendant is of sufficient intellect to comprehend the course of the proceedings of the Trial so as to make a proper defense, to challenge a witness, to whom he might wish to object, and to understand the details of the evidence." This is the wording of the translation in my possession. In my view this question is answered by the experts to the effect that the defendant is incapable of adequately defending himself, of rejecting the testimony of a witness and of comprehending evidence submitted. That, as I see it, is the conclusion of all the experts' reports with the exception of the one signed by the Russians.

May I refer to the report signed by the American Delegation, dated 20 November 1945, it is stated there under Number 1:

> "We find as a result of our examinations and investigations, that Rudolf Hess is suffering from hysteria characterized in part by loss of memory."

Now comes the passage to which I should like to draw the Tribunal's attention:

> "The loss of memory is such that it will not interfere with his comprehension of the proceedings, but it will interfere with his response to questions relating to his past and will interfere with his undertaking his defense."

This report thus establishes that Hess' defense will be impaired. And I believe that if the experts go so far as to admit that his memory is affected, then one may assume that to a great degree he is not fit to plead. The report of the Soviet-French representatives, signed by the Russian professors and by Professor Jean Delay goes even further in stating that, although the defendant is able to comprehend all that happens around him, the amnesia affects his capacity to defend himself and to understand details of the past and that it must be considered an impediment. As I see it, the report clearly means that, although the defendant is not insane, and although he can follow the proceedings as such, he cannot defend himself as he is suffering from a form of amnesia which is based on hysteria and which can be believed.

THE TRIBUNAL (Mr. Biddle): Do you accept the opinion of the experts?

DR. VON ROHRSCHEIDT: Yes.

THE TRIBUNAL (Gen. Nikitchenko): I should like to draw the attention of Defense Counsel to the fact that he has referred inaccurately to the decision reached by the Soviet and French experts. He has rendered this decision in a free translation which does not correspond to the original contents.

DR. VON ROHRSCHEIDT: May I ask whether the report of November 16 is meant? May I once more read what my translation says? I can only refer to the translation of the English text that was given to me; this translation was made in the Translation Division of the Secretariat and handed to me.

May I repeat that the translation in my possession refers to the report of November 16, 1945 signed by members of the Soviet Delegation and by Professor Delay of Paris.

Under point 3 of this report the following is stated:

"At present he is not insane in the strict sense of the word. His amnesia does not prevent him completely from understanding what is going on around him but it will interfere with his ability to conduct his defense and to understand details of the past which would appear as factual data."

That is the text which I have here before me in the authentic German version.

THE PRESIDENT: That is all we wish to ask you. Does the Chief Prosecutor for the United States wish to address the Tribunal?

MR. JUSTICE JACKSON: I think General Rudenko would like to open discussion, if that is agreeable.

THE PRESIDENT: Yes. Are you going on?

GEN. RUDENKO: In connection with the statement made by counsel for the defendant, on the results of the evidence of Hess' certified psychological condition, I consider it essential to make the following declaration:

The defendant's psychological condition was confirmed by experts appointed by the Tribunal. These experts came to the unanimous conclusion that he is sane and responsible for his actions. The Chief Prosecutors, after discussing the results of the decision and acting in accordance with the order of the Tribunal, make the following reply to the inquiry of the Tribunal:

First of all, we do not question or doubt the findings of the commission. We consider that the Defendant, Rudolf Hess, is perfectly able to stand his trial. This is the unanimous opinion of the Chief Prosecutors. I consider that the findings of the examinations by the experts are quite sufficient to declare Hess sane and able to stand his trial. We therefore request the Tribunal to make the requisite decision this very day.

In stating his reasons for the postponement of the proceedings or for the settlement of the defendant's case, defense counsel referred to the decision of the experts. I must state, however, that this decision—and I do not know on what principle it was reached—

was quoted quite inaccurately. In the summary submitted by defense counsel, it is pointed out that the mental condition of the Defendant Hess does not permit him to defend himself, to reply to the witnesses or to understand all the details of the evidence. This is contrary to the decision submitted by the experts in their statement. The final conclusion of the experts definitely states that his loss of memory would not entirely prevent him from understanding the trial; it would, however, make it impossible for him to defend himself and to remember particulars of the past. I consider that these particulars, which Hess is unable to remember, would not unduly interest the Tribunal. The most important point is that emphasized by the experts in their decision, a point which they themselves never doubted and which, incidentally, was never doubted by Hess' defense counsel, namely—that Hess is sane; and in that case Hess comes under the jurisdiction of the International Tribunal. On the basis of these facts I consider that the application of the Defense should be denied as being unsubstantiated.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, it has been suggested that I might say just a word, and as shortly as the Tribunal desires, as to the legal conceptions which govern the position with which the Tribunal and this defendant are placed at the present time.

The question before the Tribunal is whether this defendant is able to plead to the Indictment and should be tried at the present time.

If I might very briefly refer the Tribunal to the short passages in the report, which I submit are relevant, it might be useful at the present time. According to the attachments to the order, which I have, the first report is that signed by the British doctors on the 19th November 1945. And in that report I beg the Tribunal to refer to Paragraph 3, in which the signatories say that at the moment he is not insane in the strict sense. His loss of memory will not entirely interfere with his comprehension of the proceedings, but it will interfere with his ability to make his defense and to understand details of the past, which arise in evidence.

The next report is that signed by the American and French doctors, and in Paragraph 1, the Tribunal will see:

> "We find, as a result of our examinations and investigations, that Rudolf Hess is suffering from hysteria characterized in part by loss of memory. The nature of this loss of memory is such that it will not interfere with his comprehension of the proceedings, but it will interfere with his response to questions relating to his past and will interfere with his undertaking his defense."

If the Tribunal will proceed to the third report, signed by the Soviet doctors, at the foot of Page 1 of the copy that I have there is a paragraph beginning "Psychologically..." which I submit is of importance:

> "Psychologically, Hess is in a state of clear consciousness; knows that he is in prison at Nuremberg, under indictment as a war criminal; has read, and, according to his own words, is acquainted with the charges against him. He answers questions rapidly and to the point. His speech is coherent, his thoughts formed with precision and correctness and they are accompanied by sufficient emotionally expressive movements. Also, there is no kind of evidence of paralogism.
>
> "It should also be noted here, that the present psychological examination, which was conducted by Lieutenant Gilbert, Ph. D., bears out the testimony, that the intelligence of Hess is normal and in some instances, above the average. His movements are natural and not forced."

Now, if I may come to the next report, I am sorry—the report which is signed by the three Soviet doctors and Professor Delay of Paris, dated the 16th, which is the last in my bundle, that says in Paragraph 3:

> "At present, he is not insane in the strict sense of the word. His amnesia does not prevent him completely from understanding what is going on around him, but it will interfere with his ability to conduct his defense and to understand details of the past, which would appear as factual data."

I refer, without quoting, because I do not consider that they are of such importance on this point, to the explanation of the kind and reason of the amnesia which appeared in the Soviet report, dated 17 November, under the numbers 1, 2, and 3 at the end of the report. But I remind the Tribunal that all these reports unite in saying that there is no form of insanity.

In these circumstances, the question in English law—and I respectfully submit that to the consideration of the Tribunal as being representative of natural justice in this regard—is, in deciding whether the defendant is fit to plead, whether the defendant be insane or not, and the time which is relevant for the deciding of that issue is at the date of the arraignment and not at any prior time.

Different views have been expressed as to the party on whom the onus of proof lies in that issue, but the later, and logically the better view, is that the onus is on the Defense, because it is always presumed that a person is sane until the contrary is proved

Now, if I might refer the Court to one case which I suspect, if I may so use my mind, has not been absent from the Court's mind, because of the wording of the notice which we are discussing today, it is the case of Pritchard in 7 Carrington and Pike, which is referred to in Archibolds' *Criminal Pleading* in the 1943 edition, at Page 147.

In Pritchard's case, where a prisoner arraigned on an indictment for felony appeared to be deaf, dumb, and also of non-sane mind, Baron Alderson put three distinct issues to the jury, directing the jury to be sworn separately on each: Whether the prisoner was mute of malice, or by the visitation of God; (2) whether he was able to plead; (3) whether he was sane or not. And on the last issue they were directed to inquire whether the prisoner was of sufficient intellect to comprehend the course of the proceedings of the trial so as to make a proper defense, to challenge a juror, that is, a member of the jury, to whom he might wish to object and to understand the details of the evidence; and he directed the jury that if there was no certain mode of communicating to the prisoner the details of the evidence so that he could clearly understand them, and be able properly to make his defense to the charge against him, the jury ought to find that he was not of sane mind.

I submit to the Tribunal that the words there quoted, "to comprehend the course of the proceedings of the trial so as to make a proper defense," emphasize that the material time, the only time which should be considered, is whether at the moment of plea and of trial the defendant understands what is charged against him and the evidence by which it is supported.

THE PRESIDENT: And does not relate to his memory at that time.

SIR DAVID MAXWELL-FYFE: That is, I respectfully agree with Your Lordship, it does not relate to his memory. It has never, in English jurisprudence, to my knowledge, been held to be a bar either to trial or punishment, that a person who comprehends the charge and the evidence has not got a memory as to what happened at the time. That, of course, is entirely a different question which does not arise either on these reports or on this application as to what was the defendant's state of mind when the acts were committed. No one here suggests that the defendant's state of mind when the action charged was committed was abnormal, and it does not come into this case.

THE PRESIDENT: He will, it seems to me, be able to put forward his amnesia as part of his defense.

SIR DAVID MAXWELL-FYFE: Certainly, My Lord.

THE PRESIDENT: And to say, "I should have been able to make a better defense if I had been able to remember what took place at the time."

SIR DAVID MAXWELL-FYFE: Yes, My Lord. If I might compare a very simple case within my experience, and I am sure within the experience of members of the Court where this has arisen scores of times in English courts, after a motor accident when a man is charged with manslaughter or doing grievous bodily harm, he is often in the position of saying, "Because of the accident my memory is not good or fails as to the acts charged." That should not, and no one has ever suggested that it could, be a matter of relief from criminal responsibility. I hope that the Tribunal will not think that I have occupied too much of their time, but I thought it was useful just to present the matter on the basis of the English law as I understand it.

THE TRIBUNAL (Mr. Biddle): Sir David, so I can understand you, one of the tests under the Pritchard case is whether or not the defendant can make a proper defense, is it not?

SIR DAVID MAXWELL-FYFE: With the greatest respect, you have got to read that with the preceding words, which limit it. They say, "Whether a prisoner was of sufficient intellect to comprehend the course of the proceedings of the trial so as to make a proper defense."

THE TRIBUNAL: (Mr. Biddle): And would you interpret that to mean that this defendant could make a proper defense under the procedure of the trial if you also find as a fact, which you, I think, do not dispute, and which you quoted in fact, that although not insane—now I quote that he did not understand, or rather:

> "His amnesia does not prevent him completely from understanding what is going on around him, but it will interfere with his ability to conduct his defense, and understand details of the past . . . ."

You don't think that is inconsistent with that finding?

SIR DAVID MAXWELL-FYFE: No, I am submitting it is not. It is part of his defense, and it may well be, "I don't remember anything about that at all." And he could actually add to that, "From my general behavior or from other acts which I undoubtedly have done, it is extremely unlikely that I should do it." That is the defense which is left to him. And he must take that defense. That is my submission.

THE TRIBUNAL (Mr. Biddle): So even if we assume, for the purpose of argument, that his amnesia is complete, and that he remembers nothing that occurred before the indictment though now understanding the proceedings, you think he should be tried?

SIR DAVID MAXWELL-FYFE: I submit he should be tried. That is my submission as to the legal position. I especially didn't discuss, of course, as the Tribunal will appreciate—I didn't discuss the quantum of amnesia here because I am putting that to the Tribunal. I wanted to put before the Tribunal the legal basis on which this application is opposed. Therefore I accept readily the extreme case which the learned American judge has put to me.

THE PRESIDENT: M. Donnedieu de Vabres would like to ask a question.

THE TRIBUNAL (M. De Vabres): I would like to know in what period the real amnesia of Hess applies. He pretends to have forgotten facts which occurred more than 15 days ago. It may be simulation or, as they say in the report, it may be real simulation. I would like to know if according to the reports Hess has really lost his memory of facts which are referred to in the Indictment, facts which pertain to the past covered by the Indictment.

SIR DAVID MAXWELL-FYFE: The facts which are included in the Indictment, the explanation that the doctors give as to his amnesia, is most clearly set out in these paragraphs of the Soviet report. That is the third report dated the 17th of November 1945, Page 2, and the numbered paragraphs 1 to 3. They say first:

"In the psychological personality of Hess there are no changes typical of the progressive schizophrenic disease"—that is, there are no changes typical of a progressive double personality developing.—"and therefore, the delusions, from which he suffered periodically while in England, cannot be considered as manifestations of a schizophrenic paranoia, and must be recognized as the expression of a psychogenic paranoic reaction, that is, the psychologically comprehensible reaction"—now I ask the learned French judge to note the next sentence—"of an unstable personality to the situation (the failure of his mission, arrest, and incarceration). Such is the interpretation of the delirious statements of Hess in England as is bespoken by their disappearance, appearance, and repeated disappearance depending on external circumstances which affected the mental state of Hess."

Paragraph 2:

"The loss of memory by Hess is not the result of some kind of mental disease but represents hysterical amnesia, the basis of which is a subconscious inclination towards self-defense" —now I ask the learned French judge to note again the next words—"as well as a deliberate and conscious tendency towards it. Such behavior often terminates when the hysterical

person is faced with an unavoidable necessity of conducting himself correctly. Therefore the amnesia of Hess may end upon his being brought to trial."

Paragraph 3:

"Rudolf Hess, prior to his flight to England, did not suffer from any kind of insanity, nor is he now suffering from it. At the present time he exhibits hysterical behavior with signs of"—and again I ask the learned French judge to note this point—"with signs of a conscious-intentional (simulated) character, which does not exonerate him from his responsibility under the Indictment."

The last sentence is a matter for the Tribunal. But in these circumstances it would be impossible to say that the amnesia may continue to be complete or is entirely unconscious. That is deliberately avoided by the learned doctors. Therefore the Prosecution do not say that that is the case, but they do say that even if it were complete, the legal basis which I have suggested to the Court is a correct one for action in this matter.

THE PRESIDENT: Thank you, Sir David. Would Dr. Rohrscheidt like to add anything by way of reply? One moment. Mr. Justice Jackson, I gathered from what Sir David said that he was speaking on behalf of you and of the French Prosecution, is that correct?

MR. JUSTICE JACKSON: I intend to adopt all that he said. I would only add a few more words, if I may.

THE PRESIDENT: Doctor Rohrscheidt, Mr. Justice Jackson has something to say first of all.

MR. JUSTICE JACKSON: I adopt all that has been said, and will not repeat. We have three applications before the Tribunal. One is for another examination. I will spend very little time on that. I think that we have made, up to this point with this examination, medical history in having seven psychiatrists from five nations who are completely in agreement. An achievement of that kind is not likely to be risked.

The only reason suggested here is that a relatively short time has been devoted to the examination, but I suggest to Your Honors that that is not the situation, because there have been available the examinations and observations and medical history during the incarceration of Hess in England, extending from 1941, and the reports of the psychiatrists of the American forces since he was brought to Nuremberg, and they all agree. So that there is a more complete medical history in this case than in most cases.

The next application was as to trial *in absentia*. I shall spend no time on that, for there seems to be no occasion for trying Hess

in absentia if he shouldn't be tried in his presence. If he is unable to be tried, why, he simply shouldn't be tried at all. That is all I can see to it. "

I would like to call your attention to the one thing in all this, the one statement on which any case can be made here for postponement. That is the statement with which we all agree: That Hess' condition will interfere with his response to questions relating to his past and will interfere with his undertaking his defense. Now, I think it will interfere with his defense if he persists in it, and I am sure that counsel has a very difficult task. But Hess has refused the treatment, and I have filed with the court the report of Major Kelly, the American psychiatrist, in whose care he was placed immediately after he was brought here.

He has refused every simple treatment that has been suggested. He has refused to submit to the ordinary things that we submit to every day—blood tests, examinations—and says he will submit to nothing until after the trial. The medication which was suggested to bring him out of this hysterical situation—every psychiatrist agrees that this is simply an hysterical situation if it is genuine at all—was the use of intravenous drugs of the barbital series, either sodium amytal or sodium phenotal, the ordinary sort of sedative that you perhaps take on a sleepless night. We did not dare administer that, to be perfectly candid, against his objection, because we felt if that, however harmless—and in over a thousand cases observed by Major Kelly there have been no ill effects although some cases are reported where there have—we felt that if should he be struck by lightning a month afterward it would still be charged that something that we had done had caused his death; and we did not desire to impose any such treatment upon him.

But I respectfully suggest that a man cannot stand at the bar of the Court and assert that his amnesia is a defense to his being tried, and at the same time refuse the simple medical expedients which all agree might be useful.

He is in the volunteer class with his amnesia. When he was in England, as the reports show, he is reported to have made the statement that his earlier amnesia was simulated. He came out of this state during a period in England, and went back into it. It is now highly selective. That is to say, you can't be sure what Hess will remember and what he will not remember. His amnesia is not of the type which is a complete blotting out of the personality, of the type that would be fatal to his defense.

So we feel that so long as Hess refuses the ordinary, simple expedients, even if his amnesia is genuine, that he is not in a position to continue to assert that he must not be brought to trial.

We think he should be tried, not *in absentia,* but that this trial should proceed.

THE TRIBUNAL (Mr. Biddle): Isn't Hess asserting that he wants to be tried?

MR. JUSTICE JACKSON: Well, I don't know about that. He has been interrogated and interrogated by us, interrogated by his co-defendants, and I wouldn't attempt to say what he would now say he wants. I haven't observed that it is causing him any great distress. Frankly, I doubt very much if he would like to be absent, but I wouldn't attempt to speak for him.

THE PRESIDENT: Does M. Dubost wish to add anything?

[M. Dubost indicated that he did not.]

DR. VON ROHRSCHEIDT: May I just say a few words to the Tribunal to explain my point of view once more?

Firstly, it is a fact that the Defendant Hess, according to the unanimous reports of the doctors, is not insane, that his mental faculties are not impaired.

Secondly, as all reports agree, the Defendant Hess is suffering from amnesia. The reports vary on whether this amnesia is founded on a pathological, a psychogenic, or hysterical basis, but they agree that it exists as an unsound mental condition. The defendant is therefore, not insane, but has a mental defect. Legally, therefore, he cannot claim that he is not to be held responsible for his actions; for at the time when the actions with which he is charged were committed, he was certainly not insane, and consequently can be held responsible. It is a different question, however, at least according to German law, whether the defendant is at this moment in a position to follow the proceedings of a trial, that is, whether he is fit to plead. And on the basis of the medical reports which I quoted, I think this question should be answered negatively. He is not fit to plead.

I admit that doubts are possible, that the Tribunal may have doubts whether the answers of the experts are sufficient to establish that the defendant's ability to plead is actually impaired, that he cannot, as the Tribunal perhaps deliberately phrased it, defend himself adequately. I think that perhaps the emphasis should be on this last point. It is my opinion that the amnesia—this loss of memory confirmed by all experts—is such that the defendant is unable to make an adequate defense. It may be, of course, that he can defend himself on one point or another, that he can raise objections on some points, and that he may be able to follow the proceedings as such. But his defense could not be termed adequate

in the sense in which the defense of a person in full possession of his mental faculties would be adequate.

May I add one word. I already mentioned that the defendant told me that he would like to attend the proceedings, as he does not consider himself unfit to plead, but that, in the opinion of the Defense, is quite irrelevant. It is a question which the Tribunal must examine, and in which the personal opinion of the defendant is of no account.

With regard to the conclusion which the American prosecutor draws from the defendant's refusal to undergo the narco-synthesis treatment suggested by the doctors—that is not a question of truculence. He refused it only because, as he assured me, he was afraid that the intravenous injections at this particular moment might incapacitate him in his weakened condition and make it impossible for him to follow the proceedings; he wants, however, to attend the trial. He refused also because, as I have already mentioned, he himself thinks that he is sound and therefore says, "I do not need any intravenous injections, I shall recover in the course of time." The defendant also told me that he has an abhorrence of such treatments. I know that to be true, because in the unhappy times of the National Socialist regime, he was always in favor of natural remedies. He even founded the Rudolf Hess Hospital in Dresden, which uses natural and not medical remedies.

MR. JUSTICE JACKSON: May I make one observation, Your Honors?

THE PRESIDENT: Yes.

MR. JUSTICE JACKSON: The argument illustrates the selectivity of the memory of which I spoke to you. Hess apparently can inform his counsel about his attitude toward this particular matter during the National Socialist regime. His counsel is able to tell us how he felt about medical things during the National Socialist regime, but when we ask him about anything in which he participated that might have a criminal aspect, the memory becomes bad. I hope that the Court has not overlooked the statement of the matters that he does well recollect.

DR. VON ROHRSCHEIDT: May I make a correction?

THE PRESIDENT: It is unusual to hear counsel in a second reply, but as Mr. Justice Jackson has spoken again we will hear what you have to say.

DR. VON ROHRSCHEIDT: I merely want to say that I was misunderstood. It was not the defendant who told me that he always favored natural remedies; I said that from my own knowledge. I said it from my own experience to show that he has an

instinctive aversion for medical interference. My remark was not based on the memory of the defendant, but on knowledge of my own.

THE PRESIDENT: Dr. Rohrscheidt, the Tribunal would like, if you consider it proper, that the Defendant Hess should state what his views on this question are.

DR. VON ROHRSCHEIDT: As his defense counsel, I have certainly no objection, and in my opinion it is the defendant's own wish to be heard. The Tribunal would then be able to gain a personal impression of his condition.

THE PRESIDENT: He can state whether he considers himself fit to plead from where he is.

HESS: Mr. President, I would like to say this. At the beginning of the proceedings this afternoon I gave my defense counsel a note saying that I thought the proceedings could be shortened if I would be allowed to speak. I wish to say the following:

In order to forestall the possibility of my being pronounced incapable of pleading, in spite of my willingness to take part in the proceedings and to hear the verdict alongside my comrades, I would like to make the following declaration before the Tribunal, although, originally, I intended to make it during a later stage of the trial:

Henceforth my memory will again respond to the outside world. The reasons for simulating loss of memory were of a tactical nature. Only my ability to concentrate is, in fact, somewhat reduced. But my capacity to follow the trial, to defend myself, to put questions to witnesses, or to answer questions myself is not affected thereby.

I emphasize that I bear full responsibility for everything that I did, signed or co-signed. My fundamental attitude that the Tribunal is not competent, is not affected by the statement I have just made. I also simulated loss of memory in consultations with my officially appointed defense counsel. He has, therefore, represented it in good faith.

THE PRESIDENT: The trial is adjourned.

[The Tribunal adjourned until 1 December 1945 at 1000 hours.]

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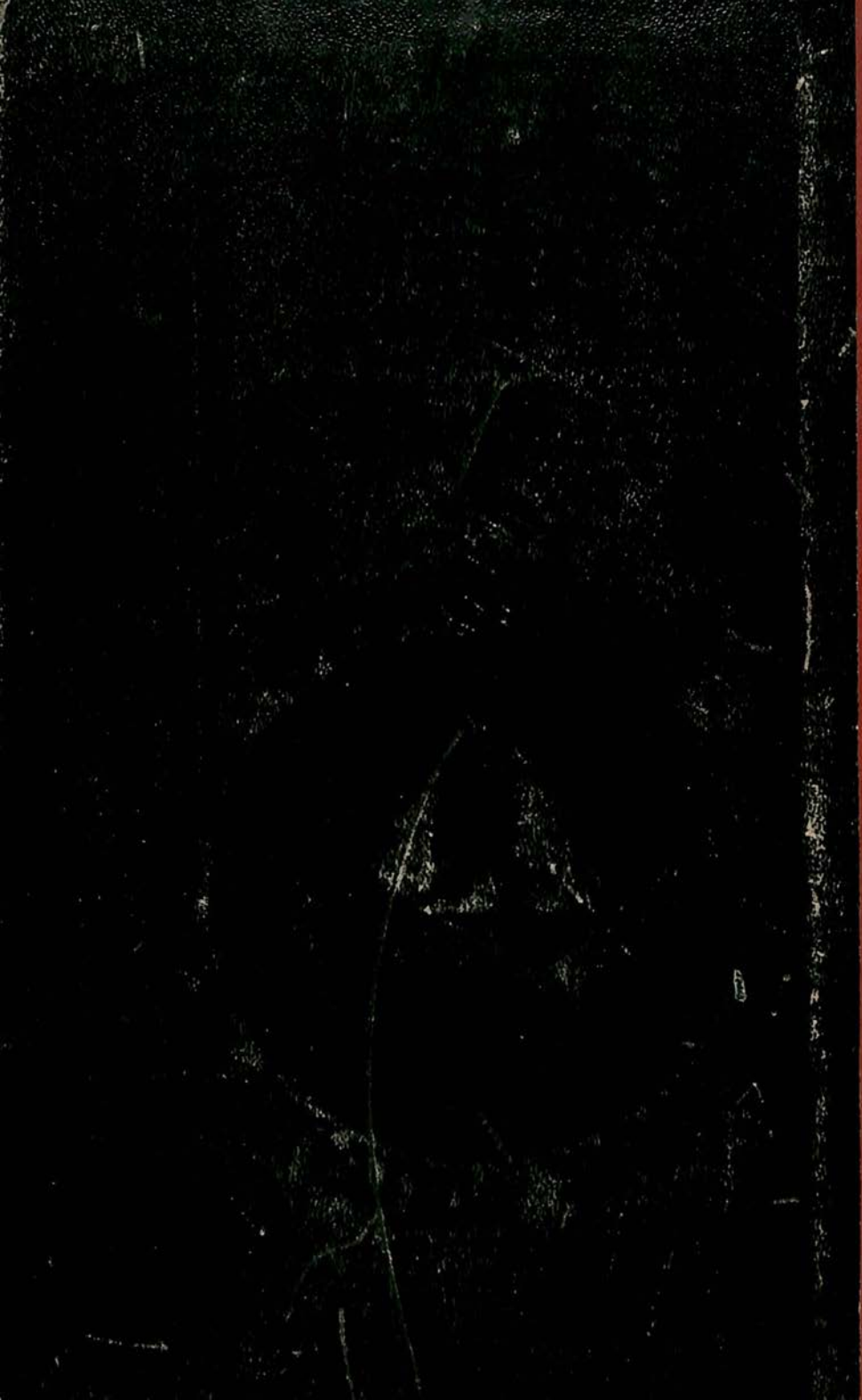
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